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IN THE
SUPREME COURT OF THE UNITED STATES

ELEANOR TAFT TILTON, ET AL.,
Appellants,

v. No. 1555

ROBERT H. FINCH, ET AL
Appellees

Relevant Docket Entries

1968

September 25 - Verified Complaint, filed. Summons issued and together with copies of same and of complaint, handed to the Marshal for service.

September 25 - Request for 3-Judge Court, pursuant to 28 U.S.C. 2282 and 2284, filed by Plaintiffs.

October 15 - Designation of Judges, filed: "Having been notifed by the Honorable William H. Timbers, United States District Judge for the District of Connecticut, that an application has been filed in the above matter for relief pursuant to Title 28 United States Code Section 2284, I hereby designate the following judges, in addition to said Honorable William H. Timbers, to hear and determine said cause as provided by law: Honorable J. Joseph Smith, United States Circuit Judge, and Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut. IT IS HEREBY ORDERED that this order be filed in the above entitled cause in the United States District Court for the District of Connecticut. J. Edward Lumbard, Chief Judge, U.S. Court of Appeals for Second Circuit. M-10/15/68. Copies mailed to three Judges; copies mailed to all counsel of record.

November 25 - Answer of Defendants Sacred Heart University, Annhurst College, Fairfield University of Saint Robert Bellarmine, and Albertus Magnus College.

November 25 - Answer and Defenses, filed by Defendants Wilbur J. Cohen and Harold Howe 2d. Copies mailed to 3 Judges.

December 8 - Answer of Defendant, Marvin K. Peterson, filed.

1969

August 5 - Order entered that Robert H. Finch as Secretary of Health, Education and Welfare, and James E. Allen, Jr., as Commissioner of Education of the United States be substituted as parties defendant in place of Wilbur J. Cohen and Harold Howe II, their respective predecessors in office. Blumenfeld, J. M-8/5/69 Copies mailed all counsel. Copies to three judges.

November 3 - Motion for Leave to Amend Complaint, Notice of Motion and Affidavit, filed by Plaintiffs.

November 10 - Hearing on Motion for Leave to Amend Complaint. "No objection having been made by the defendants, the motion is granted." Blumenfeld, J. M-11/12/69. Copies mailed to all counsel.

November 13 - Amended Complaint, filed. Copies to 3 Judges.

December 2 - 3-Judge Court Commences. Jeffrey Axelrod admitted for this case for defendant U.S.A., on Motion of F. MacBuckley. Opening Statements: Leo Pfeffer 10:02 A.M.–10:43 A.M.; Mr. Axelrod 10:43 A.M. to 11:04 A.M.; Mr. Ahern 11:04 A.M. to 11:06 A.M.; Mr. Williams 11:06 A.M.–11:50 A.M. Recess 11:50 A.M. to 12:10 P.M. Opening Statement cont'd 12:10 P.M. to 12:31 P.M. Pltf. reply 12:31 P.M. to 12:33 P.M. Defendant's Motion to Dismiss Action–Decision Reserved. Recess 12:40 P.M. to 1:58 P.M. Plaintiffs' Exhibits 1 through 22 marked for Identification. Plaintiffs' Exhibits 125, 126 & 127, filed. Plaintiffs' Exhibits 1 through 22 for Identification filed as full exhibits. Plaintiffs' Exhibit 35 marked for Identification; Plaintiffs' Exhibit 128 filed; 37 offered, then withdrawn; Plaintiff's Exhibit 38 marked. Exhibit 38 withdrawn. Plaintiff's

Exhibits 129, 130, 131 marked for identification; 22 through 36 marked for identification; 56 through 79 marked for identification; 58 & 60 withdrawn. Objection to 66 sustained and exhibit ordered sealed by Protective Order; Exhibits 56, 57, 59, 61, 62, 63, 64, 65, 67, 68 through 79 filed as full exhibits. Objection to 129 sustained; 130 admitted as full exhibit. Court adjourned at 4:50 p.m. until 10:00 A.M., Dec. 3, 1969. Smith, C. J.; Timbers, D. J.; Blumenfeld, D.J. M-12/4/69.

December 3 - 3-Judge Court continues. Plaintiffs' Exhibits 80–93 marked for identification; 132, 133, 134, 135 and 136 marked for identification; 41 withdrawn; 51 withdrawn; Objection to 43, 44, 45, 46 & 47 is sustained; 49 & 50 will be admitted when missing pages are submitted. Exhibits 39, 40, 42, 48, 52, 53, 54 & 55 for identification filed as full exhibits; 95–124 marked for Iden. (Sacred Heart); Objection sustained to Plaintiffs' Exhibits 86, 87; 92 withdrawn; 94 not offered or marked; 137 filed; 138 filed; 96, 98, 99, 102 withdrawn; Objection to 104 sustained; 105 withdrawn 107, 110, 112; Exhibits 80 and 82 thru 85, and 88–91 filed as full exhibits; 93 filed as full exhibit; Objection to 111 sustained; 122 & 123 withdrawn; 95, 97, 100, 101, 103, 105, 106, 108, 109, 113 through 121 & 124 filed as full exhibits; 81 for identification–withdrawn. 3 Plaintiffs' witnesses sworn and testified. Court adjourned at 4:25 P.M. until 10:00 A.M., Dec. 4, 1969. Smith, C.J.; Timbers, D. J. Blumenfeld, D. J. M-12/4 69.

December 4 - 3 Judge Court Continues. Plaintiffs' Exhibits for Identification 87, 129, 132, 133, 134, 135, 136, filed as full exhibits; 28 for identification withdrawn. Excerpts of statements by Mr. Axelrod and Mr. Pfeffer filed by Collard, R.–6 page transcript. Plaintiffs rest, subject to marking of Plaintiffs' Exhibits 142, 143, 144 & 145 as full exhibits. Defendant's (U.S.) Motion to Dismiss, For Judgment and to Strike, heard; Defendant's (State of Conn.) Motion to Dismiss, for Judgment and to Strike, heard; Defendants' (Colleges & Universities) Motion to Dismiss, for Judgment and to Strike, heard. Decision Reserved on all

motions. Defendants United States and State of Connecticut will not put on any evidence. Defendant's Exhibits DC-1, DC-2 and DC-3 filed as full exhibits. Defendants recalled Father McInness to stand. Defendant's Exhibits F-1, F-2, F-4, F-6, F-7, filed; F-3 marked for identification. (Defendants' F-5 will not be offered and is withdrawn). Plaintiffs' Exhibit 146 marked for identification. 12 Defendants' witnesses sworn and testified. Plaintiffs' Exhibit 99 for identification, filed as full for defendants. Defendants' Exhibits SH-3 and SH-4 filed. (SH-1 and SH-2 not offered or marked). Defendant recalled Sister Marie Louise Hubert. Defendants' AM-1, filed. Court adjourned at 5:00 P.M., until 10:00 A.M., Dec. 5, 1969. Smith, C.J.; Timbers, D.J.; Blumenfeld, D.J. M-12/8/69.

December 5 - 3 Judge Court Continues. Sister Marie Louise resumes stand. Defendants' Exhibit AM-2 filed as full exhibit. Plaintiffs withdraw Plaintiffs' Exhibit 4D and it was offered by defendants as Defendants' Exhibit AM-2-A and received as a full exhibit. Defendants' Exhibit AM-3 filed. Plaintiffs' Exhibit 139 filed. 2 Defendants' witnesses affirmed and testified; 5 Defendants' witnesses sworn and testified. Defendants' Exhibits A-1, A-3, A-4, A-5, A-6, SH-2, AM-2, filed. Defendant Colleges rest. Defendants' A-2 not offered or marked. Defendants Conn. & U.S.A. motion to strike denied. Plaintiffs' Exhibit 140 may be filed when received; Exhibits 49 & 50 for identification filed as full exhibits; Exhibit 52 withdrawn; Exhibits 141, 147 and 148, filed. Plaintiffs rest in rebuttal. Briefs by Jan. 19th, Oral Argument Jan. 22, at 10:00 A.M. Court adjourned at 2:50 P.M. Smith, C.J.; Timbers, D.J.; Blumenfeld, D.J. M-12/8/69.

December 22 - Court Reporter's Transcripts of Proceedings of December 2, 3, 4 & 5 filed. Collard, R.

1970

January 9 - Court Reporter's Notes of Proceedings of December 2 & 5, 1969, filed at Hartford. Collard, R. (Pack 1 of 2)

January 22 - 3-Judge Court Continues. Plaintiff's Exhibit 140 filed as a full exhibit (Fairfield employment contract—was agreed upon at trial but supplied and marked today) Summation by counsel: Mr. Pfeffer—10:06 A.M. to 11:15 A.M.; Mr. Costas—11:15 A.M. to 11:43 A.M. Plaintiff's Exhibit 149 filed (retreat article) Recess: 11:43—11:58 A.M. Mr. Axelrod 11:58 A.M. to 12:16 P.M.; Mr. Ahern 12:16 P.M. to 12:18 P.M. Luncheon Recess 12:18 P.M. to 1:20 P.M.; Mr. Williams—1:21 P.M. to 2:47 P.M.; Mr. Pfeffer—2:48 P.M. to 3:08 P.M. Decision Reserved. Court adjourned at 3:09 P.M. Smith, C.J.; Timbers, D.J.; Blumenfeld, J., D.J. M-1/23/70

February 9 - Court Reporter's Transcript of Proceedings of January 22, 1970, filed at Hartford. Collard, R. (Given to Judge Smith)

March 19 - Opinion filed. (1) The Court has jurisdiction over the subject matter and the parties; (2) The Act authorizes the grants made to defendant colleges and universities for construction of academic facilities; (3) The Act and grants thereunder to not impair plaintiffs' rights under the establishment clause or the free exercise clause of the First Amendment; (4) The Act and grants thereunder do not discriminate against non-sectarian institutions by depriving them of federal funds in violation of the First and Fourteenth Amendments; (5) Plaintiffs are not entitled to injunctive relief against defendants; (6) Defendants are entitled to judgment dismissing the complaint, but without costs. This opinion, together with the separately stated Findings of Fact and Conclusions of Law filed herewith, constitute the Court's Finding of Fact and Conclusions of Law pursuant to Rule 52(a), Fed. R. Civ. P. Defendants' motions to dismiss, which were made at the close of plaintiffs' opening statement and at the close of plaintiffs' case, are denied. Various motions to strike evidence, upon which the Court reserved decision, are denied insofar as they are directed at evidence which supports the Court's findings of fact and conclusions of law; in all other respects, the mo-

tions are dismissed as moot. J. Joseph Smith, U.S.C.J.; William H. Timbers, U.S.D.J.; M. Joseph Blumenfeld, U.S. D.J. M-3/19/70.

March 19 - Findings of Fact and Conclusions of Law, filed. J. Joseph Smith, U.S.C.J.; Wm. H. Timbers, U.S.D.J.; M. Joseph Blumenfeld, U.S.D.J. M-3/19/70.

March 19 - Judgment entered that (1) judgment be, and it hereby is, entered on the merits in favor of defendants, denying all relief sought by plaintiffs and dismissing the complaint; (2) the no costs shall be taxed against any party to this action. J. Joseph Smith, U.S.C.J.; Wm. H. Timbers, U.S.D.J.; M. Joseph Blumenfeld, U.S.D.J. M-3/19/70.

April 8 - Notice of Appeal, filed by plaintiffs. Copies mailed to all Counsel and three Judges.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELEANOR TAFT TILTON, MILDRED H. CLARK, CAROL D. GOLDSTONE, THEODORE GURNEY, HARVEY L. RAISNER, ELISABETH R SWAIN, WYMAN W. PARKER, PAUL A. REYNOLDS, RUFUS BLANSHARD, JAY S. ROTH, CARL W. SCHAEFER, NORMAN T. DAVIS, HERBERT I. GOLDSTONE, JAMES W. GARDNER, JR., CHARLES L. PENDLETON
Plaintiffs

v. Civil Action No.____

WILBUR J. COHEN, Secretary of the United States Department of Health, Education and Welfare, HAROLD HOWE, 2d, Commissioner of Education of the United States, MARVIN K. PETERSON, Chairman of the Commission on Aid to Higher Education of the State of Connecticut, SACRED HEART UNIVERSITY, ANNHURST COLLEGE FAIRFIELD UNIVERSITY OF SAINT ROBERT BELLARMINE, ALBERTUS MAGNUS COLLEGE
Defendants

VERIFIED COMPLAINT

STATEMENT AS TO JURISDICTION

1. This is a civil action brought by Plaintiffs, on their own behalf and on behalf of all others similarly situated, for a temporary and permanent injunction against the allocation and use of the funds of the United States to finance, in whole or in part, construction of facilities in sectarian schools, and to declare such use of funds of the United States unconstitutional under the First Amendment.

2. Jurisdiction is conferred upon this Court pursuant to Title 28, U.S.C.A., Sections 1331, 2282, 2284, and 2201, and Title 20, U.S.C.A., Section 721.

3. The amount in controversey in this suit, exclusive of interest and costs, is in excess of Ten Thousand Dollars ($10,000) as more fully appears hereinafter.

4. Plaintiff Eleanor Taft Tilton resides in Hartford, Connecticut; Plaintiff Mildred H. Clark resides in New Haven, Connecticut; Plaintiff Carol D. Goldstone resides in Mansfield Center, Connecticut; Plaintiff Theodore Gurney resides in Glastonbury, Connecticut; Plaintiff Harvey L. Raisner resides in Bloomfield, Connecticut; and, Plaintiff Paul A. Reynolds resides in Middletown, Connecticut.

5. Plaintiffs Rufus Blanshard, of Storrs, Connecticut; Norman T. Davis of Mansfield Center, Connecticut; Herbert I. Goldstone or Mansfield Center, Connecticut; Jay S. Roth of Storrs, Connecticut; and Carl W. Schaefer of Storrs, Connecticut, are members of the faculty of the University of Connecticut at Storrs, Connecticut, an institution of higher learning funded primarily by the State of Connecticut, which institution is not organized for nor engaged in the propagation or promotion of the doctrines, teachings and practices of any religion and is open to enrollment of and attracts students of all races and of all or no religious persuasion, and which institution does not require any sectarian training or religious obligations of its students.

6. Plaintiff James W. Gardner, Jr., of Simsbury, Connecticut, is a member of the faculty of Trinity College in Hartford, Connecticut, which, although a private institution of higher learning, is not organized for nor engaged in the propagation or promotion of the doctrines, teachings and practices of any religion and is open to enrollment and attracts students of all races and of any or no religious persuasion, and which does not require any sectarian training or religious obligations of its students.

7. Plaintiff Wyman W. Parker, of Middletown, Connecticut, is a member of the faculty of Wesleyan University in Middletown, Connecticut, which although a private institution of higher learning, is not organized for nor engaged in the propagation or promotion of the doctrines, teachings

and practices of any religion and is open to enrollment and attracts students of all races and of any or no religious persuasion, and which does not require any sectarian training or religious obligations of its students.

8. Plaintiff Elisabeth R. Swain, of Hartford, Connecticut, is a member of the faculty of the University of Hartford, at West Hartford, Connecticut, which, although a private institution of higher learning, is not organized for nor engaged in the propagation or promotion of the doctrines, teachings and practices of any religion and is open to enrollment and attracts students of all races and of any or no religious persuasion, and which does not require any sectarian training or religious obligations of its students.

9. Plaintiff Charles L. Pendleton of West Hartford, Connecticut is the parent of a student enrolled at the University of Connecticut, in Storrs, Connecticut and contributes to the support of the education of his son at the University of Connecticut by the payment of taxes to the State of Connecticut and by other financial assistance.

10. Each of the Plaintiffs in Paragraph 4 through 9 above is a citizen and resident of the United States and of the State of Connecticut. Each plaintiff pays income and other taxes to the United States and is a qualified local voter of the United States.

11. A. Defendant Wilbur J. Cohen is Secretary of the United States Department of Health, Education and Welfare and is sued herein in that capacity.

11. B. Defendant Harold Howe, 2d, is Commissioner of Education of the United States and is sued herein in that capacity.

11. C. Defendant Marvin K. Peterson is Chairman of the Commission on Aid to Higher Education of the State of Connecticut and is sued herein in that capacity. He and other members of the Commission are appointed by the Governor of the State of Connecticut and recommend to defendants Wilbur J. Cohen and Harold Howe, 2d, the in-

stitution of higher learning within the State of Connecticut and the grants to be made to such institutions pursuant to the Higher Education Facilities Act of 1963.

II. FACTUAL ALLEGATIONS

12. Defendants Sacred Heart University, located in Bridgeport, Connecticut, Annhurst College, located in South Woodstock, Connecticut, Fairfield University of Saint Robert Bellarmine (hereinafter called "Fairfield University"), located in Fairfield, Connecticut and Albertus Magnus College, located in New Haven, Connecticut, are such sectarian educational institutions at the college or university level organized for and engaged in the propagation and promotion of the doctrine, teachings and practices of the Roman Catholic religion as more fully set forth herein.

13. Defendant Sacred Heart University is an institution of higher learning organized, conducted and controlled by the Diocese of Bridgeport of the Roman Catholic Church in accordance with the dogma and doctrines of said church for the purpose of providing a Catholic education for all Catholic youths.

14. Defendant Annhurst College is an institution of higher learning organized, conducted and controlled by the Daughters of the Holy Spirit, a religious society of the Roman Catholic Church, in accordance with the dogma and doctrines of said church, for the purposes of propagating and promoting the Roman Catholic faith.

15. Defendant Fairfield University is an institution of higher learning organized, conducted and controlled by the Society of Jesus, a religious society of the Roman Catholic Church, in accordance with the dogma and doctrines of said church, for the purpose of propagating and promoting the Roman Catholic faith.

16. Defendant Albertus Magnus College is an institution of higher learning organized, conducted and controlled by the Dominican Sisters of St. Mary, a religious society of the Roman Catholic Church in accordance with the dogma and

doctrines of said church for the purpose of propagating and promoting the Roman Catholic faith.

17. In 1963, the Congress of the United States enacted, and the President of the United States approved, P.L. 88-204 (Title 20, U.S.C.A., Sections 701-758) known as the Higher EducationFacilities Act of 1963, subchapter 1 whereof authorizes grants of Federal funds for the construction of undergraduate academic facilities.

18. The Higher Education Facilities Act of 1963 empowers and requires the defendant, Harold Howe, 2d, in his capacity as Commissioner of Education, to pass upon all applications for Federal funds and to withhold approval from any program which does not comply with the terms, condition and limitations of the Act.

19. Defendant Marvin K. Peterson and other members of the Commission are appointed by the Governor of the State of Connecticut pursuant to Section 3-10A of the Connecticut General Statutes, and their predecessors, have made recommendations to the defendant Commissioner of Education for grants of various sums to be made to the defendant institutions of higher learning, which recommendations purport to be made in conformity with the terms of the Higher Education Facilities Act of 1963.

20. Purporting to act in conformity with the terms of Higher Education Facilities Act of 1963, the defendant Commissioner of Education notified defendant Sacred Heart University that it had been granted $367,100 for construction of a library estimated to cost $1,124,800. Plaintiffs are advised and believe that defendant Commissioner has caused to be paid to defendant Sacred Heart University $190,263 in Federal funds and that the remaining funds will be paid over to defendant Sacred Heart University unless this court enjoins said payment.

21. Purporting to act in conformity with the terms of the Higher Education Facilities Act of 1963, defendant Commissioner of Education notified defendant Annhurst

College that it had been granted $350,697 for construction of a building for music, drama and arts estimated to cost $1,565,781. Plaintiffs are advised and believe said Federal funds will be paid over to defendant Annhurst College unless this court enjoins said payment.

22. Purporting to act in conformity with the terms of the Higher Education Facilities Act of 1963, the defendant Commissioner of Education notified defendant Fairfield University that it had been granted $245,310 for construction of a science building estimated to cost $3,277,712. Plaintiffs are advised and believe said Federal funds will be paid over to defendant Fairfield University unless this court enjoins said payment.

23. Purporting to act in conformity with the terms of the Higher Education Facilities Act of 1963, the defendant Commissioner of Education notified defendant Fairfield University that it had been granted $500,000 for construction of a library estimated to cost $1,662,000. Plaintiffs are advised and believe that as of this date defendant Commissioner of Education has caused to be paid to defendant Fairfield University $297,340 in Federal funds and that the remaining funds will be paid over to defendant Fairfield University unless this court enjoins said payment.

24. Purporting to act in conformity with the terms of the Higher Education Facilities Act of 1963, the defendant Commissioner of Education notified defendant Albertus Magnus College that it had been granted $24,632 for laboratories in a general purpose building estimated to cost $1,577,868. Plaintiffs are advised and believe said Federal funds will be paid over to defendant Albertus Magnus College unless this court enjoins said payment.

25. It was not the intention of Congress in enacting subchapter 1 of the Higher Education Facilities Act of 1963 to require or permit Federal agencies to violate the prohibitions of the First Amendment to the United States Constitution but Congress intended to limit such expenditures to those educational institutions which by their nature, could receive Federal funds, under the First Amendment.

26. Upon information and belief, there are many schools in Connecticut which qualify under the terms of the Higher Education Facilities Act of 1963 for grants for construction of facilities to expand pupil enrollment, which could receive such grants without violating the provisions of the First Amendment, including but not limited to the University of Connecticut, Trinity College, University of Hartford and Wesleyan University.

27. Upon information and belief, the secular purposes of the Congress in enacting the Higher Education Facilities Act of 1963 can be achieved without granting Federal funds to sectarian educational institutions organized for and engaged in the propagation and promotion of sectarian religion.

28. In the event that it was the intent of Congress to permit the expenditure of Federal funds for construction of facilities at sectarian institutions and the law is being administered in accordance with such intent by Defendants Wilbur J. Cohen and Harold Howe, 2d, then, to that extent, the Higher Education Facilities Act of 1963 violates the prohibitions of the First Amendment to the United States Constitution.

III. CAUSES OF ACTION

29. *First Count:* The determinations and actions of the defendants violate the First and Fourteenth Amendments to the United States Constitution in that they constitute a law respecting an establishment of religion by reason of the fact that they effect a contribution of tax-raised funds to the support of institutions which teach the tenets of a church and constitute governmental financing of religious groups and government action whose purpose and primary effect is to advance religion.

30. *Second Count:* The determinations and actions of the defendants violate the First and Fourteenth Amendments to the United States Constitution in that they prohibit the free exercise of religion on the part of the plaintiffs and the

class they represent by reason of the fact that they constitute compulsory taxation for religious purposes.

31. *Third Count:* The determinations and actions of the defendants violate the First and Fourteenth Amendments to the United States Constitution in that they deprive nonsectarian institutions of higher learning which are open to and attract students of all races and of all or no religious persuasion of those funds which are granted to sectarian institutions of higher learning, and which funds might be used for the benefit of all potential students rather than a limited class of students.

IV. OTHER ALLEGATIONS

32. This suit involves a genuine case or controversy between the plaintiffs and the defendants.

33. The plaintiffs have no plain, speedy or adequate remedy at law and will suffer irreparable injury unless a preliminary and permanent injunction is granted.

34. The consciences of all of the plaintiffs are offended by the use of any portion of the taxes, which they are compelled to pay, for the support of institutions which teach and promulgate the tenets of any church and which thereby advance religion either directly or indirectly.

V. PRAYERS FOR RELIEF

35. The plaintiffs pray that the following relief be granted:

(1) That a three-judge court be convened as provided in Title 28, Sections 2282 and 2284 of the U.S. Code to declare unconstitutional the determinations and actions of the defendants as hereinbefore set forth.

(2) That the court adjudge and declare that the determinations and actions of the defendants as hereinbefore set forth are not authorized or intended by the Higher Education Facilities Act of 1963, or in the alternative if such determinations and actions are within the authority and intent of the Act, the Act is to that extent unconstitutional and void.

(3) That the defendants, Wilbur J. Cohen and Harold Howe 2d, and each of them be enjoined from approving any program for the expenditure of Federal funds to finance in whole or in part construction of facilities in sectarian educational institutions.

(4) That the defendant, Marvin K. Peterson and the other members of the Commission on Aid to Higher Education be enjoined from recommending any program for the expenditure of Federal funds to finance in whole or in part construction of facilities in sectarian educational institutions.

(5) That defendants Sacred Heart University, Annhurst College, Albertus Magnus College and Fairfield University, and each of them, be enjoined from receiving any more Federal funds under grants already awarded under the Higher Educational Facilities Act of 1963 or from applying for new grants under said Act.

(6) That a preliminary injunction pending the trial of the issue be granted to the plaintiffs against the defendants for the relief set forth herein.

(7) That the plaintiffs be granted such other and further relief as to the Court may seem just and proper.

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By_____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

[Caption omitted in printing]

ANSWER OF DEFENDANTS SACRED HEART UNIVERSITY, ANNHURST COLLEGE, FAIRFIELD UNIVERSITY OF SAINT ROBERT BELLARMINE, AND ALBERTUS MAGNUS COLLEGE

First Defense

Plaintiffs' complaint fails to state a cause of action entitling them to relief.

Second Defense

FIRST: Defendants admit the allegations of Paragraph 1 except the allegation that the action is brought on behalf of all others similarly situated as to which defendants are without knowledge or information sufficient to form a belief as to the truth thereof.

SECOND: Defendants admit the allegations of Paragraph 2 of the complaint, except that defendants deny that jurisdiction is conferred upon this Court by Title 20, U.S.C., Section 721.

THIRD: Defendants admit that the amount in controversy in this action, exclusive of interest and costs, is in excess of Ten Thousand Dollars ($10,000), as alleged in Paragraph 3 of the complaint.

FOURTH: Defendants allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs 4 through 10 of the complaint.

FIFTH: Defendants admit the allegations of Paragraphs 11A and 11B and upon information and belief admit the allegations of Paragraph 11C.

SIXTH: Defendants Sacred Heart University, located in Bridgeport, Connecticut, Annhurst College, located in South Woodstock, Connecticut, Fairfield University of Saint Rob-

ert Bellarmine (hereinafter called "Fairfield University"), located in Fairfield, Connecticut and Albertus Magnus College, located in New Haven, Connecticut admit that they are educational institutions at the college or university level, but deny that they are sectarian and organized for and engaged in the propagation and promotion of the doctrinal teachings and practices of the Roman Catholic Religion as alleged by plaintiffs in paragraph 12.

SEVENTH: Defendant Sacred Heart University admits that it is an institution of higher learning, but denies that it is organized, conducted and controlled by the Diocese of Bridgeport of the Roman Catholic Church in accordance with the dogma and doctrines of said church for the purpose of providing a Catholic education for all Catholic youths as alleged by plaintiffs in paragraph 13.

EIGHTH: Defendant Annhurst College admits that it is an institution of higher learning, but denies that it is organized, conducted and controlled by the Daughters of the Holy Spirit, a religious society of the Roman Catholic Church, in accordance with the dogma and doctrines of said church, for the purposes of propagating and promoting the Roman Catholic faith as alleged by plaintiffs in paragraph 14.

NINTH: Defendant Fairfield University admits that it is an institution of higher learning, but denies that it is organized, conducted and controlled by the Society of Jesus, a religious society of the Roman Catholic Church, in accordance with the dogma and doctrines of said church, for the purpose of propagating and promoting the Roman Catholic faith as alleged by plaintiffs in paragraph 15.

TENTH: Defendant Albertus Magnus College admits that it is an institution of higher learning, but denies that it is organized, conducted and controlled by the Dominican Sisters of St. Mary, a religious society of the Roman Catholic Church in accordance with the dogma and doctrines of said church for the purpose of propagating and promoting

the Roman Catholic faith as alleged by plaintiffs in paragraph 16.

ELEVENTH: Defendants admit that in 1963, the Congress of the United States enacted, and the President of the United States approved, P.L. 88-204 known as the Higher Education Facilities Act of 1963 and that subchapters 1 and 4 (Title 20 U.S.C.A. §§ 701-721 and 751-758) thereof authorize grants of Federal funds for the construction of undergraduate academic facilities.

TWELFTH: Defendants admit the allegations of Paragraphs 18 and 19 of the complaint.

THIRTEENTH: Defendant Sacred Heart University admits that the allegations of Paragraph 20 are substantially correct.

FOURTEENTH: Defendant Annhurst College admits the allegations of Paragraph 21.

FIFTEENTH: Defendant Fairfield University admits that the allegations of Paragraph 22 are substantially correct.

SIXTEENTH: Defendant Fairfield University admits the allegations of Paragraph 23.

SEVENTEENTH: Defendant Albertus Magnus College admits the allegations of Paragraph 24.

EIGHTEENTH: Defendants deny each and every allegation of Paragraph 25 of the complaint, except that defendants admit that Congress had no intention to act inconsistently with the First Amendment in enacting subchapter 1 of the Higher Education Facilities Act of 1963.

NINETEENTH: Defendants allege that they are without information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs 26 and 27 of the complaint.

TWENTIETH: Defendants deny the allegations contained in Paragraphs 28 - 31 of the complaint.

TWENTY-FIRST: Defendants admit that a genuine case or controversy exists between the plaintiffs and defendants in this suit, as alleged in Paragraph 32 of the complaint.

TWENTY-SECOND: Defendants deny each and every allegation contained in Paragraph 33 of the complaint.

TWENTY-THIRD: Defendants allege that they are without information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the complaint.

Defendants' Affirmative Defense
To Plaintiffs' Third Count

Plaintiffs are without standing to assert the claim contained in the third count of their complaint.

WHEREFORE, defendants demand judgment dismissing the complaint and awarding them the costs and disbursements of this action.

WILLIAMS & CONNOLLY

Edward Bennett Williams

Jeremiah C. Collins

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Albertus Magnus College

[Certificate of service omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

[Caption omitted in printing]

ANSWER

Now come defendants Wilbur J. Cohen and Harold Howe 2d (hereinafter referred to as defendants), by their undersigned attorneys, and for their answer admit, deny, and otherwise aver as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

SECOND DEFENSE

Plaintiffs lack standing to maintain this action.

THIRD DEFENSE

The complaint fails to state a claim upon which relief can be granted.

FOURTH DEFENSE

In answer to the numbered paragraphs of the complaint herein, defendants admit, deny, and allege as follows:

1. Deny the allegations contained in Paragraph 1 of the complaint.

2. Deny the allegations contained in Paragraph 2 of the complaint.

3 through 10, inclusive. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in Paragraphs 3 through 10, inclusive, of the complaint.

11. Admit the allegations contained in Paragraph 11 of the complaint.

12. Admit so much of Paragraph 12 of the complaint as alleges that Sacred Heart University is located in Bridgeport, Connecticut; that Annhurst College is located in South Woodstock, Connecticut; that Fairfield University of Saint Robert Bellarmine is located in Fairfield, Connecticut; that Albertus Magnus College is located in New Haven, Connecticut; and that these schools are each educational institutions at the college or university level, and deny the remaining allegations contained in Paragraph 12 of the complaint.

13. Admit so much of Paragraph 13 of the complaint as alleges that Sacred Heart University is an institution of higher learning and deny the remaining allegations contained in Paragraph 13 of the complaint.

14. Admit so much of Paragraph 14 of the complaint as alleges that Annhurst College is an institution of higher learning and deny the remaining allegations contained in Paragraph 14 of the complaint.

15. Admit so much of Paragraph 15 of the complaint as alleges that Fairfield University is an institution of higher learning and deny the remaining allegations contained in Paragraph 15 of the complaint.

16. Admit so much of Paragraph 16 of the complaint as alleges that Albertus Magnus College is an institution of higher learning and deny the remaining allegations contained in Paragraph 16 of the complaint.

17 and 18, inclusive. Deny, except that defendants admit that in 1963 Congress enacted and the President approved P.L. 88-204, and the Court is respectfully referred to 20 U.S.C. 701-758, inclusive, for the terms thereof.

19. Admit the allegations contained in Paragraph 19 of the complaint.

20. Deny the allegations contained in Paragraph 20 of the complaint, except that defendants admit that defendant Commissioner of Education acted in conformity with the Higher Education Facilities Act of 1963 in authorizing the grant referred to in said paragraph and aver that the estimated eligible development cost for the library referred to in said paragraph is $1,105,800 and that $291,649 had been paid toward the federal share of said cost as of November 13, 1968.

21. Deny the allegations contained in Paragraph 21 of the complaint, except that defendants admit that defendant Commissioner of Education acted in conformity with the Higher Education Facilities Act of 1963 in authorizing the grant referred to in said paragraph and aver that the estimated eligible development cost for the building for music, drama and arts referred to in said paragraph is $1,329,717.

22. Deny the allegations contained in Paragraph 22 of the complaint, except that defendants admit that defendant Commissioner of Education acted in conformity with the Higher Education Facilities Act of 1963 in authorizing the grant referred to in said paragraph and aver that the estimated cost of the science building is $3,862,630 and eligible development cost is $3,469,194.

23. Deny the allegations contained in Paragraph 23 of the complaint, except that defendants admit that defend-

ant Commissioner of Education acted in conformity with the Higher Education Facilities Act of 1963 in authorizing the grant referred to in said paragraph and aver that the estimated eligible development cost of the library referred to in said paragraph is $1,653,000 and that $439,464 has been paid toward the federal share of said cost as of November 13, 1968.

24. Deny the allegations contained in Paragraph 24 of the complaint, except that defendants admit that defendant Commissioner of Education acted in conformity with the Higher Education Facilities Act of 1963 in authorizing the grant referred to in said paragraph and aver that the grant referred to in said paragraph was for a language laboratory in a general purpose building; that the current estimate of said building's cost is $1,577,868; and that the estimated eligible development cost of said language laboratory is $73,895.

25. The allegations contained in Paragraph 25 of the complaint are conclusions of law not requiring answer, and the Court is respectfully referred to 20 U.S.C. 701-758, inclusive, for the provisions of the Higher Education Facilities Act of 1963.

26. Admit except that defendants aver that the schools named as defendants in the instant action as well as the University of Connecticut, Trinity College, University of Hartford, and Wesleyan University are eligible to receive grants without violating the First Amendment.

27. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in Paragraph 27 of the complaint.

28 through 33, inclusive. Deny the allegations contained in Paragraphs 28 through 33, inclusive, of the complaint.

34. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in Paragraph 34 of the complaint.

35. Deny that plaintiffs are entitled to any relief whatsoever.

Defendants deny each and every allegation of the complaint not specifically admitted, qualified, or denied above.

WHEREFORE, defendants pray that plaintiffs be denied any relief and that this action be dismissed with prejudice.

Respectfully submitted,

/s/ Edwin L. Weisl, Jr.
Assistant Attorney General

/s/ Jon O. Newman
United States Attorney

/s/ Harland F. Leathers

/s/ Jeffrey F. Axelrad

Attorneys, Department of Justice

Attorneys for Defendants

[Certificate of service omitted in printing]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Caption omitted in printing]

ANSWER OF DEFENDANT MARVIN K. PETERSON, CHAIRMAN OF THE COMMISSION ON AID TO HIGHER EDUCATION OF THE STATE OF CONNECTICUT

1. Paragraphs 4, 5, 11 A, 11 B, 17, 18, 19, 20, 21, 22, 23, and 24 of the complaint are admitted.

2. Paragraphs 2, 3, 29, 30, 31, 32, 33, 34 of the complaint are denied.

3. So much of Paragraph 1 as alleges that this is a civil action brought by Plaintiffs on their own behalf for a temporary and permanent injunction against the allocation and use of the funds of the United States to finance, in whole

or in part, construction of educational facilities, and to declare use of funds of the United States unconstitutional under the First Amendment to the United States Constitution is admitted; the remaining allegations are denied.

4. So much of Paragraph 6 as alleges that Plaintiff James W. Gardner, Jr., of Simsbury, Connecticut, is a member of the faculty of Trinity College in Hartford, Connecticut, which is a private institution of higher learning is admitted; as to the remaining allegations, this defendant is without knowledge or information sufficient to form a belief and leaves the plaintiffs to their proof.

5. So much of Paragraph 7 as alleges that Plaintiff Wyman W. Parker, of Middletown, Connecticut, is a member of the faculty of Wesleyan University in Middletown, Connecticut, which is a private institution of higher learning is admitted; as to the remaining allegations, this defendant is without knowledge or information sufficient to form a belief and leaves the plaintiffs to their proof.

6. So much of Paragraph 8 as alleges the Plaintiff Elisabeth R. Swain, of Hartford, Connecticut, is a member of the faculty of the University of Hartford, at West Hartford, Connecticut, which is an institution of higher learning is admitted; as to the remaining allegations, this defendant is without knowledge or information sufficient to form a belief and leaves the plaintiffs to their proof.

7. So much of Paragraph 9 as alleges that Plaintiff Charles L. Pendleton is a resident of West Hartford, Connecticut, is admitted; as to the remaining allegations, this defendant is without knowledge or information sufficient to form a belief and leaves the plaintiffs to their proof.

8. So much of Paragraph 10 as alleges that each of the Plaintiffs in Paragraphs 4 through 9 of the complaint is a citizen and resident of the United States and of the State of Connecticut is admitted; as to the remaining allegations, this defendant is without knowledge or information sufficient to form a belief and leaves the Plaintiffs to their proof.

9. So much of Paragraph 11 C as alleges that the Defendant Marvin K. Peterson is Chairman of the Commission on Aid to Higher Education of the State of Connecticut, that he is being sued in that capacity, that he and other members of the Commission are appointed by the Governor of the State of Connecticut and that they recommend to defendants Wilbur J. Cohen and Harold Howe, 2d the grants to be made to institutions of higher learning pursuant to the Higher Education Facilities Act of 1963 is admitted; the remaining allegations are denied.

10. So much of Paragraph 12 as alleges that Defendants Sacred Heart University, located in Bridgeport, Connecticut, Annhurst College, located in South Woodstock, Connecticut, Fairfield University, located in Fairfield, Connecticut and Albertus Magnus College, located in New Haven, Connecticut, are educational institutions at the college or university level is admitted; as to the remaining allegations, this defendant is without knowledge or information sufficient to form a belief and leaves the plaintiffs to their proof.

11. So much of Paragraph 13 as alleges that Defendant Sacred Heart University is an institution of higher learning is admitted; as to the remaining allegations, this defendant is without knowledge or information sufficient to form a belief and leaves the plaintiffs to their proof.

12. So much of Paragraph 14 as alleges that Defendant Annhurst College is an institution of higher learning is admitted; as to the remaining allegations, this defendant is without knowledge or information suffcient to form a belief and leaves the plaintiffs to their proof.

13. So much of Paragraph 15 as alleges that Defendant Fairfield University is an institution of higher learning is admitted; as to the remaining allegations, this defendant is without knowledge or information sufficient to form a belief and leaves the plaintiffs to their proof.

14. So much of Paragraph 16 as alleges that Defendant Albertus Magnus College is an institution of higher learning is admitted; as to the remaining allegations, this defendant

is without knowledge or information sufficient to form a belief and leaves the plaintiffs to their proof.

15. So much of Paragraph 25 as alleges that Congress in enacting the Higher Education Facilities Act of 1963 intended said Act to comply with all the provisions of the United States Constitution is admitted; any other implications which might be derived from said allegations are denied.

16. So much of Paragraph 26 as alleges that there are many educational institutions in Connecticut, including but not limited to the University of Connecticut, which qualify for grants under the terms of the Higher Education Facilities Act of 1963 is admitted; as to the remaining allegations, this defendant is without knowledge or information sufficient to form a belief and leaves the plaintiffs to their proof.

17. As to the allegations in Paragraphs 27 and 28, this defendant is without knowledge or information sufficient to form a belief and leave the plaintiffs to their proof.

THE DEFENDANT
MARVIN K. PETERSON,
Chairman of the Commission on Aid to Higher Education of the State of Connecticut

By: ROBERT K. KILLIAN
ATTORNEY GENERAL

F. MICHAEL AHERN
Assistant Attorney General

His Attorneys

30 Trinity Street
Hartford, Connecticut

[Certificate of service omitted in printing]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Caption omitted in printing]

AMENDED COMPLAINT

I. *STATEMENT AS TO JURISDICTION*

1. This is a civil action brought by Plaintiffs, on their own behalf and on behalf of all others similarly situated, for a temporary and permanent injunction against the allocation and use of the funds of the United States to finance, in whole or in part, construction of facilities in sectarian schools, and to declare such use of funds of the United States unconstitutional under the First Amendment.

2. Jurisdiction is conferred upon this Court pursuant to Title 28, U.S.C.A., Sections 1331, 2282, 2284 and 2201, and Title 20, U.S.C.A., Section 721.

3. The amount in controversy in this suit, exclusive of interest and costs, is in excess of Ten Thousand Dollars ($10,000) as more fully appears hereinafter.

4. Plaintiff Eleanor Taft Tilton resides in Hartford, Connecticut, Plaintiff Mildred H. Clark resides in New Haven, Connecticut; Plaintiff Carol D. Goldstone resides in Mansfield Center, Connecticut; Plaintiff Theodore Gurney resides in Glastonbury, Connecticut; Plaintiff Harvey L. Raisner resides in Bloomfield, Connecticut; and Plaintiff Paul A. Reynolds resides in Middletown, Connecticut.

5. Plaintiffs Rufus Blanshard of Storrs, Connecticut; Norman T. Davis of Mansfield Center, Connecticut; Herbert L. Goldstone of Mansfield Center, Connecticut; Jay S. Roth of Storrs, Connecticut; and Carl W. Schaefer of Storrs, Connecticut, are members of the faculty of the University of Connecticut at Storrs, Connecticut, an institution of higher learning funded primarily by the State of Connecticut, which institution is not organized for nor engaged in the propagation or promotion of the doctrines, teachings and practices of any religion and is open to enrollment of

and attracts students of all races and of all or no religious persuasion, and which institution does not require any sectarian training or religious obligations of its students.

6. Plaintiff James W. Gardner, Jr., of Simsbury, Connecticut is a member of the faculty of Trinity College in Hartford, Connecticut, which, although a private institution of higher learning, is not organized for nor engaged in the propagation of promotion of the doctrines, teachings and practices of any religion and is open to enrollment and attracts students of all races and of any or no religious persuasion, and which does not require any sectarian training or religious obligations of its students.

7. Plaintiff Wyman W. Parker, of Middletown, Connecticut, is a member of the faculty of Wesleyan University in Middletown, Connecticut, which, although a private institution of higher learning, is not engaged in nor organized for the propagation or promotion of the doctrines, teachings and practices of any religion and is open to enrollment and attracts students of all races and of any or no religious persuasion, and which does not require any sectarian training or religious obligations of its students.

8. Plaintiff Elisabeth R. Swain of Hartford, Connecticut, is a member of the faculty of the University of Hartford at West Hartford, Connecticut, which, although a private institution of higher learning, is not organized for nor engaged in the propagation or promotion of the doctrines, teachings and practices of any religion and is open to enrollment and attracts students of all races and of any or no religious persuasion, and which does not require any sectarian training or religious obligations of its students.

9. Plaintiff Charles L. Pendleton of West Hartford, Connecticut is the parent of a student enrolled at the University of Connecticut, in Storrs, Connecticut and contributes to the support of the education of his son at the University of Connecticut by the payment of taxes to the State of Connecticut and by other financial assistance.

10. Each of the Plaintiffs in Paragraph 4 through 9 above is a citizen and resident of the United States and of the State of Connecticut. Each plaintiff pays income and other taxes to the United States and is a qualified local voter of the United States.

11. A. Robert H. Finch is Secretary of the United States Department of Health, Education and Welfare and is sued herein in that capacity.

11. B. Defendant James E. Allen, Jr. is Commissioner of Education of the United States and is sued herein in that capacity.

11. C. Defendant Marvin K. Peterson is Chairman of the Commission on Aid to Higher Education of the State of Connecticut and is sued herein in that capacity. He and other members of the Commission are appointed by the Governor of the State of Connecticut and recommend to defendants Robert H. Finch and James E. Allen, Jr., the institutions of higher learning within the State of Connecticut and the grants to be made to such institutions pursuant to the Higher Education Facilities Act of 1963.

II. *FACTUAL ALLEGATIONS*

12. Defendants Sacred Heart University, located in Bridgeport, Connecticut, Annhurst College, located in South Woodstock, Connecticut, Fairfield University, located in Fairfield, Connecticut; and Albertus Magnus College, located in New Haven, Connecticut, are each sectarian educational institutions at the college or university level organized for and engaged in the propagation and promotion of the doctrine, teachings and practices of the Roman Catholic religion as more fully set forth herein.

13. Defendant Sacred Heart University is an institution of higher learning organized, conducted and controlled by the Diocese of Bridgeport of the Roman Catholic Church in accordance with the dogma and doctrines of said church for the purpose of providing a Catholic education for all Catholic youths.

14. Defendant Annhurst College is an institution of higher learning organized, conducted and controlled by the Daughters of the Holy Spirit, a religious society of the Roman Catholic Church, in accordance with the dogma and doctrines of said church, for the purposes of propagating and promoting the Roman Catholic faith.

15. Defendant Fairfield University is an institution of higher learning organized, conducted and controlled by the Society of Jesus, a religious society of the Roman Catholic Church, in accordance with the dogma and doctrines of said church, for the purpose of propagating and promoting the Roman Catholic faith.

16. Defendant Albertus Magnus College is an institution of higher learning organized, conducted and controlled by the Dominican Sisters of St. Mary, a religious society of the Roman Catholic Church in accordance with the dogma and doctrines of said church for the purpose of propagating and promoting the Roman Catholic faith.

17. In 1963, the Congress of the United States enacted, and the President of the United States approved, P.L. 88-204 (Title 20, U.S. C.A., Sections 701-758) known as the Higher Education Facilities Act of 1963, subchapter 1, whereof authorizes grants to Federal funds for the construction of undergraduate academic facilities.

18. The Higher Education Facilities Act of 1963 empowers and requires the defendant, James E. Allen, Jr., in his capacity as Commissioner of Education, to pass upon all applications for Federal funds and to withhold approval from any program which does not comply with the terms, conditions and limitations of the Act.

19. Defendant Marvin K. Peterson and other members of the Commission are appointed by the Governor of the State of Connecticut pursuant to Section 3-10A of the Connecticut General Statutes, and their predecessors have made recommendations to the defendant Commissioner of Education for grants of various sums to be made to the defendant institutions of higher learning, which recommendations

purport to be made in conformity with the terms of the Higher Education Facilities Act of 1963.

20. Purporting to act in conformity with the terms of the Higher Education Facilities Act of 1963, the defendant Commissioner of Education notified defendant Sacred Heart University that it had been granted approximately $367,100 for construction of a library estimated to cost approximately $1,124,800. Plaintiffs are advised and believe that defendant Commissioner has caused to be paid to defendant Sacred Heart University in excess of $190,263 in Federal funds and that the remaining funds will be paid over to defendant Sacred Heart University unless this court enjoins said payment.

21. Purporting to act in conformity with the terms of the Higher Education Facilities Act of 1963, defendant Commissioner of Education notified defendant Annhurst College that it had been granted approximately $350,697 for construction of a building for music, drama and arts estimated to cost approximately $1,565,781. Plaintiffs are advised and believe said Federal funds will be paid over to defendant Annhurst College unless this court enjoins said payment.

22. Purporting to act in conformity with the terms of the Higher Education Facilities Act of 1963, the defendant Commissioner of Education notified defendant Fairfield University that it had been granted approximately $245,310 for construction of a science building stimated to cost approximately $3,277,712. Plaintiffs are advised and believe said Federal funds will be paid over to defendant Fairfield University unless this court enjoins said payment.

23. Purporting to act in conformity with the terms of the Higher Education Facilities Act of 1963, the defendant Commissioner of Education notified defendant Fairfield University that it had been granted approximately $500,000 for construction of a library estimated to cost approximately $1,662,000. Plaintiffs are advised and believe that as of this date defendant Commissioner of Education has caused

to be paid to defendant Fairfield University in excess of $297,340 in Federal funds and that the remaining funds will be paid over to defendant Fairfield University unless this court enjoins said payment.

24. Purporting to act in conformity with the terms of the Higher Education Facilities Act of 1963, the defendant Commissioner of Education notified defendant Albertus Magnus College that it had been granted approximately $24,632 for laboratories in a general purpose building estimated to cost approximately $1,577,868. Plaintiffs are advised and believe said Federal funds will be paid over to defendant Albertus Magnus College unless this court enjoins said payment.

25. It was not the intention of Congress in enacting subchapter 1 of the Higher Education Facilities Act of 1963 to require or permit Federal agencies to violate the prohibitions of the First Amendment to the United States Constitution but Congress intended to limit such expenditures to those educational institutions which by their nature, could receive Federal funds, under the First Amendment.

26. Upon information and belief, there are many schools in Connecticut which qualify under the terms of the Higher Education Facilities Act of 1963 for grants for construction of facilities to expand pupil enrollment, which could receive such grants without violating the provisions of the First Amendment, including but not limited to the University of Connecticut, Trinity College, University of Hartford and Wesleyan University.

27. Upon information and belief, the secular purposes of the Congress in enacting the Higher Education Facilities Act of 1963 can be achieved without granting Federal funds to sectarian educational institutions organized for and engaged in the propagation and promotion of sectarian religion.

28. In the event that it was the intent of Congress to permit the expenditure of Federal funds for construction of facilities at sectarian institutions and the law is being

administered in accordance with such intent by defendants Robert H. Finch and James E. Allen, Jr., then, to that extent, the Higher Education Facilities Act of 1963 violates the prohibitions of the First Amendment to the United States Constitution.

III. *CAUSES OF ACTION*

29. *First Count:* The determinations and actions of the defendants violate the First and Fourteenth Amendments to the United States Constitution in that they constitute a law respecting an establishment of religion by reason of the fact that they effect a contribution of tax-raised funds to the support of institutions which teach the tenets of a church and constitute governmental financing of religious groups and government action whose purpose and primary effect is to advance religion.

30. *Second Count:* The determinations and actions of the defendants violate the First and Fourteenth Amendments to the United States Constitution in that they prohibit the free exercise of religion on the part of the plaintiffs and the class they represent by reason of the fact that they constitute compulsory taxation for religious purposes.

31. *Third Count:* The determinations and actions of the defendants violate the First and Fourteenth Amendments to the United States Constitution in that they deprive non-sectarian institutions of higher learning which are open to and attract students of all races and of all or no religious persuasion of those funds which are granted to sectarian institutions of higher learning, and which funds might be used for the benefit of all potential students rather than a limited class of students.

IV. *OTHER ALLEGATIONS*

32. This suit involves a genuine case or controversy between the plaintiffs and the defendants.

33. The plaintiffs have no plain, speedy or adequate remedy at law and will suffer irreparable injury unless a preliminary and permanent injunction is granted.

34. The consciences of all of the plaintiffs are offended by the use of any portion of the taxes, which they are compelled to pay, for the support of institutions which teach and promulgate the tenets of any church and which thereby advance religion either directly or indirectly.

V. *PRAYERS FOR RELIEF*

35. The plaintiffs pray that the following relief be granted:

(1) That a three-judge court be convened as provided in Title 28, Sections 2282 and 2284 of the U.S. Code to declare unconstitutional the determinations and actions of the defendants as hereinbefore set forth.

(2) That the court adjudge and declare that the determinations and actions of the defendants as hereinbefore set forth are not authorized or intended by the Higher Education Facilities Act of 1963, or in the alternative if such determinations and actions are within the authority and intent of the Act, the Act is to that extent unconstitutional and void.

(3) That the defendants, Robert H. Finch and James E. Allen, Jr., and each of them be enjoined from approving any program for the expenditure of Federal funds to finance in whole or in part construction of facilities in sectarian educational institutions.

(4) That the defendant, Marvin K. Peterson and the other members of the Commission on Aid to Higher Education be enjoined from recommending any program for the expenditure of Federal funds to finance in whole or in part construction of facilities in sectarian educational institutions.

(5) That defendants Sacred Heart University, Annhurst College, Albertus Magnus College and Fairfield University, and each of them, be enjoined from receiving any more Federal funds under grants already awarded under the Higher Education Facilities Act of 1963.

(6) That the plaintiffs be granted such other and further relief as to the Court may seem just and proper.

By: Peter L. Costas
Attorney for All Plaintiffs

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

UNITED STATES DISTRICT COURT

District of Connecticut

Civil No. 12,767

Eleanor Taft Tilton, Mildred H. Clark, Carol D. Goldstone, Theodore Gurney, Harvey L. Raisner, Elisabeth R. Swain, Wyman W. Parker, Paul A. Reynolds, Rufus Blanshard, Jay S. Roth, Carl W. Schaefer, Norman T. David, Herbert T. Goldstone, James W. Gardner, Jr., Charles L. Pendleton,

Plaintiffs,

vs.

Robert H. Finch, Secretary of the United States Department of Health, Education and Welfare, James E. Allen, Jr., Commissioner of Education of the United States, Marvin K. Peterson, Chairman of the Commission on Aid to Higher Education of the State of Connecticut, Sacred Heart University, Annhurst College, Fairfield University, Albertus Magnus College,

Defendants.

Before J. Joseph Smith, Circuit Judge, and Timbers and Blumenfeld, District Judges.

Taxpayers suit seeking declaratory and injunctive relief on the ground that their constitutional rights are impaired by the Higher Education Facilities Act of 1963, 20 U.S.C.

§§701-58 (1964), and by grants thereunder to defendant church related colleges and universities for construction of academic facilities. Judgment for defendants.

Leo Pfeffer, New York, N.Y., Peter L. Costas, Melvin S. Katz, Paul W. Orth, Robert Smith, Hartford, Conn., and Jerry Wagner, Bloomfield, Conn., *for plaintiffs.*

Jeffrey F. Axelrad, Atty., William D. Ruckelhaus, Asst. Atty. Gen., Harland F. Leathers, Atty., Dept. of Justice, Wash. D.C., Stewart H. Jones, U.S. Atty., and F. Mac Buckley, Asst. U.S. Atty., Hartford, Conn., *for defendants Robert H. Finch and James E. Allen, Jr.*

F. Michael Ahern, Asst. Atty. Gen., and Robert K. Killian, Atty. Gen., State of Connecticut, Hartford, Conn., *for defendant Marvin K. Peterson.*

Edward Bennett Williams, Jeremiah C. Collins and Charles H. Wilson, Jr., of Williams & Connolly, Wash. D.C., *for all defendant colleges and universities.*

James J. O'Connell, of Coles, O'Connell & Dolan, Bridgeport, Conn., *for defendant Sacred Heart University.*

Howard T. Owens, of Owens & Schine, Bridgeport, Conn., *for defendants Annhurst College and Fairfield University.*

Donald F. Keefe, Lawrence W. Iannotti and Bruce Lewellyn, of Tyler, Cooper, Grant, Bowerman & Keefe, New Haven, Conn., *for defendant Albertus Magnus College.*

TIMBERS, District Judge:

QUESTIONS PRESENTED

This taxpayers suit seeking declaratory and injunctive relief with respect to the Higher Education Facilities Act of 1963, 20 U.S.C. §§701-58 (1964) (the Act), presents the following essential questions:

(1) Whether the Act authorizes grants to defendant church related colleges and universities for construction of academic facilities.

(2) If so, whether the Act and grants thereunder impair plaintiffs' rights under the establishment clause or the free exercise clause of the First Amendment of the Constitution of the United States.

For the reasons stated below, we hold that the Act does authorize the grants in question and that neither the Act nor the grants thereunder impair plaintiffs' constitutional rights in the respects claimed.[1] Judgment therefore must be entered for defendants dismissing the complaint.

PARTIES TO THE ACTION

Plaintiffs are fifteen residents and citizens of the United States and of Connecticut. They are federal taxpayers suing for themselves and others similarly situated. As taxpayers they have standing to sue. *Flast* v. *Cohen*, 392 U.S.

1. Plaintiffs assert a further claim that, to the extent that funds are granted under the Act to "sectarian" institutions, to that extent "non-sectarian" institutions are deprived of such funds and are discriminated against, in violation of the First and Fourteenth Amendments. We also reject this claim as lacking merit. The eligibility of an institution for grants under the Act does not depend upon its relation to any organized religion.

83, 88-91 (1967); see *Association of Data Processing Service Organizations, Inc.* v. *Camp*, —— U.S. ——, 38 U.S.L.W. 4193 (U.S. March 3, 1970), and *Barlow* v. *Collins*, —— U.S. ——, 38 U.S.L.W. 4195 (U.S. March 3, 1970).

Defendant government officials are the Secretary of the Department of Health, Education and Welfare of the United States, the Commissioner of Education for the United States, and the Chairman of the Connecticut Commission on Aid to Higher Education; they are sued in their official capacities, particularly with respect to their duties in the administration of the Act. Defendant colleges and universities are Sacred Heart University, Annhurst College, Fairfield University and Albertus Magnus College, four church related Connecticut colleges and universities;[2] they are sued as recipients under the Act of grants for the construction of various academic facilities.

CLAIMS OF THE PARTIES

Plaintiffs claim that the Act does not authorize grants to defendant colleges and universities for construction of academic facilities; and, if the Act does authorize such grants, the Act and grants violate the establishment clause and the free exercise clause of the First Amendment. Accordingly, plaintiffs seek (i) a declaratory judgment that

2. The amended complaint alleges that each of the four defendant institutions are "organized for and engaged in the propagation and promotion of the doctrine, teachings and practices of the Roman Catholic religion"; that three of the institutions, Annhurst College, Fairfield University and Albertus Magnus College, are "organized, conducted and controlled" by religious orders; and that the fourth, Sacred Heart University, is "organized, conducted and controlled" by the Diocese of Bridgeport of the Roman Catholic Church. Amended complaint, ¶¶12-16.

the determinations and actions of defendant government officials in allocating federal funds to defendant colleges and universities for construction of academic facilities are not authorized by the Act, or, in the alternative, if the Act authorizes such grants, a declaratory judgment that the Act to that extent is unconstitutional and the grants are void; (ii) injunctive relief enjoining defendant government officials from recommending and approving any program for the expenditure of federal funds to finance in whole or in part construction of academic facilities in "sectarian educational institutions" and enjoining defendant colleges and universities from receiving any more funds already awarded under the Act; and (iii) such further relief as may be just and proper.

Defendants' position is that the grants received by defendant colleges and universities are authorized by the Act and that the Act and grants do not impair plaintiffs' constitutional rights.

JURISDICTION

This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §1331(a) (1964).

Since the action seeks injunctive relief with respect to an Act of Congress on the ground of repugnance to the Constitution of the United States, a special statutory district court of three judges were convened to hear and determine the action pursuant to 28 U.S.C. §§2282 and 2284 (1964).

HEARINGS AND RECORD

The pleadings having been closed, the Court held a five day hearing at Hartford on the merits.

The record before the Court consists of the pleadings; facts established by stipulation; some 155 documentary exhibits; and the testimony of 22 witnesses.

Counsel for the respective parties have been fully heard in oral argument; and they have submitted helpful briefs, together with proposed findings of fact and conclusions of law.

CLAIM THAT ACT DOES NOT AUTHORIZE GRANTS TO DEFENDANT COLLEGES AND UNIVERSITIES

The threshold question is whether the Act authorizes grants to defendant colleges and universities for construction of academic facilities, plaintiffs' initial claim being that Congress did not intend to make church related institutions of higher education eligible for grants under the Act.

The Act by its terms neither includes nor excludes church related institutions as such; it simply authorizes grants to "institutions of higher education"[3] of federal funds for construction of academic facilities.

The Act, however, defines an "institution of higher education"—without regard to whether it is church related or not—as an institution which is nonprofit, accredited and legally authorized by the state in which it is located to pro-

3. 20 U.S.C. §§711, 716 (1964).

vide a program of education beyond high school.[4] Since church related colleges and universities may meet these criteria, they may be eligible for grants under the Act.

Moreover, the Act forbids grants for construction of "any facility used or to be used for sectarian instruction or as a place for religious worship" or "any facility which • • • is used or to be used primarily in connection with any part of the program of a school or department of divinity".[5] These limitations in the Act itself make it plain that grants for construction of academic facilities to be used in connection with other functions of church related colleges and universities were contemplated.

Indeed the legislative history is quite conclusive that Congress intended to make the benefits of the Act available to church related colleges and universities.[6] Not only did the sponsors and floor managers of the legislation so state in the debate,[7] but amendments to deny the benefits of the Act to such institutions were voted down.[8]

As to whether the Act authorizes the instant grants to defendant colleges and universities, we hold on the basis of the entire record before the Court that defendant government officials clearly acted in accordance with the provi-

4. 20 U.S.C. §751(f) (1964).

5. 20 U.S.C. §751(a)(2) (1964).

6. For the legislative history of the Act, *see generally* 1963 U.S. Code Cong. and Adm. News, pp. 1172-1202.

7. 109 Cong. Rec. 14150-51 (1963) (Remarks of Representative Powell); *id.* at 14159 (Remarks of Representative Quie); *id.* at 18409-12 (Remarks of Senator Prouty); *id.* at 19427-30 (Remarks of Senator Morse).

8. 109 Cong. Rec. 19492-96 (1963).

sions of the Act and within the scope of their authority in recommending and approving the grants in question.[9]

Having held that the Act authorizes the grants to defendant colleges and universities for construction of academic facilities, we turn now to plaintiffs' claims that the Act and the grants thereunder impair their constitutional rights.

ESTABLISHMENT CLAUSE CLAIM

Plaintiffs' primary claim challenging the constitutionality of the Act and the grants is that they violate the establishment clause of the First Amendment which provides that "Congress shall make no law respecting an establishment of religion. * * *"[10] Plaintiffs assert that federal aid in the form of construction grants to private church related educational institutions constitutes government aid to religion.

The Supreme Court has not ruled on the precise issue here presented, although it has examined the scope and meaning of the establishment clause in several decisions. Only in *Everson* v. *Board of Education*, 330 U.S. 1 (1947), and *Board of Education* v. *Allen*, 392 U.S. 236 (1968), how-

9. Reference is made to the Court's separate Findings of Fact filed herewith for a more detailed statement of the nature and purpose of the grants here involved and the manner in which the applications for such grants have been processed by defendant government officials.

10. More specifically, plaintiffs allege as the first count in their amended complaint that the determinations and actions of defendants "effect a contribution of tax-raised funds to the support of institutions which teach the tenets of a church and constitute governmental financing of religious groups and government action whose purpose and primary effect is to advance religion" in violation of the establishment clause. Amended complaint, ¶29.

ever, has the Supreme Court touched upon the establishment clause validity of government aid to private church related education.[11]

Everson involved an establishment clause challenge to a New Jersey statute which provided state reimbursement to parents of parochial school children as well as to parents of public school children for the cost of bus transportation to and from school. The Supreme Court held that the statute did not violate the establishment clause. In the course of its opinion, the Court stated:

"No tax in any amount, large or small, can be levied to support any religious activities or institutions, what-

11. There are pending a number of recent cases involving challenges under the establishment clause of the First Amendment, made applicable to the states by the Fourteenth Amendment, with respect to the validity of state statutes which authorize use of state funds to aid church related education. See, e.g., *Opinion Of The Justices*, —— Me. ——, —— A.2d —— (1970), slip opinion January 15, 1970 (proposed Maine Nonpublic Elementary Education Assistance Act of 1970, authorizing purchase of secular educational services from nonpublic schools, *held* (4-2), to violate establishment clause); *Lemon* v. *Kurtzman*, —— F.Supp. —— (E.D.Pa. 1969), slip opinion November 28, 1969 (Pennsylvania Nonpublic Elementary and Secondary Education Act of 1969, authorizing payment of state funds to nonpublic elementary and secondary schools as reimbursement for teaching certain secular subjects, *held* by a three-judge district court (2-1), not to violate establishment clause); *Vermont Educational Buildings Financing Agency* v. *Mann*, 127 Vt. 262, 247 A.2d 68 (1968), *prob. juris. noted*, 37 U.S.L.W. 3379 (U.S. April 18, 1969); *juris. postponed*, 38 U.S.L.W. 3017 (U.S. July 1, 1969) (Vermont Educational Building Financing Act of 1966, authorizing leasing and subleasing agreements between state agency and church related college for construction of classroom and science building, *held* (4-1), not to violate establishment clause); *Connecticut Civil Liberties Union* v *Sanders*, Civil No. 13432 (D. Conn., complaint filed September 30, 1969, action pending before three-judge district court) (Connecticut Act Concerning Assistance To Nonpublic Schools For Secular Education of 1969, authorizing Secretary of State Board of Education to purchase from nonpublic schools secular educational services for students, challenged, *inter alia*, as violative of establishment clause).

> ever they be called, or whatever form they may adopt to teach or practice religion." 330 U.S. at 16.

Although this language, read in isolation, might suggest that the establishment clause renders impermissible any government aid to church related educational institutions, such suggestion is dispelled by the Court's actual decision sustaining the statute. The Court so held even though it recognized that parochial schools received some benefit from state subsidization of bus transportation for parochial school children. 330 U.S. at 17. The Court noted that a state could not exclude individuals *"because of their faith, or lack of it,* from receiving the benefits of public welfare legislation." (Emphasis that of the Court) 330 U.S. at 16. Since it viewed state subsidization of bus transportation as a public welfare measure in the same category as such general government services relating to schools as police and fire protection, sewage disposal, public highways and sidewalks, it concluded that the challenged statute did not violate the establishment clause. 330 U.S. at 17-18.

Allen, the most recent Supreme Court decision dealing with government aid to church related education, involved an establishment clause challenge to a New York statute authorizing the state to loan secular school textbooks to parochial school students. In determining the validity of the challenged statute, the Court utilized the secular purpose and primary effect test under which "to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion." 392 U.S. at 243, quoting from *Abington School District* v. *Schempp,* 374

U.S. 203, 222 (1963), where the secular purpose and primary effect test was first enunciated. Applying this test in *Allen*, the Court upheld the statute on the ground that its stated legislative purpose clearly was secular and the primary effect of the loan of secular textbooks could not be said either to advance or inhibit religion.

We are not persuaded by plaintiffs' argument that *Allen* establishes some sort of child-benefit theory under which direct government aid to church related educational institutions is not permissible, while government aid to students attending such institutions is permissible because government aid to an institution in the form of student subsidies is not direct. Although the challenged statute in *Allen* authorized aid to parochial school students and their parents rather than to the schools themselves, the Court neither held nor suggested that the identity of the direct recipient of the aid was the critical factor in determining the constitutionality of the statute under the establishment clause.[12] Moreover, the child-benefit or indirect-direct aid approach would fashion an unacceptable test based on form rather than substance inasmuch as the "constitutional result would depend upon minute distinctions and technicalities." *Lemon* v. *Kurtzman*, *supra* note 11, at .... (slip opinion at 24). Consequently, we view *Allen* as confirming the secular purpose and primary effect test, rather than a child-benefit test, as controlling with respect to the establishment clause validity of the Act.

12. See also *Bradfield* v. *Roberts*, 175 U.S. 291 (1899), a much earlier decision, in which the Court sustained a federal statute authorizing direct federal aid to a hospital owned and controlled by a corporation composed of members of a monastic order or sisterhood of the Roman Catholic Church.

Lemon v. *Kurtzman*, *supra* note 11, at .... (slip opinion at 24-25); *Vermont Educational Buildings Financing Agency* v. *Mann*, *supra* note 11, at 270-71.

Applying the secular purpose and primary effect test to the Act here in question, we find that it clearly meets the first requirement of a secular legislative purpose. The purpose of the Act appears on its face. It contains a congressional declaration that the policy underlying the Act is to increase the student enrollment capacity of the Nation's institutions of higher education through grants for construction of academic facilities to help provide young people with the greatest possible opportunity for higher education; and such declaration is based on congressional findings that there is an urgent need for construction of such facilities to enable these institutions to accommodate anticipated increase in student enrollments.[13] These findings are based on evidence before Congress of the great need for expansion of educational facilities; and of the high proportion of private, including church related, colleges and universities available for such expansion.

13. The Act's statement of congressional findings and declaration of policy reads as follows (20 U.S.C. §701 (1964)):

> "The Congress hereby finds that the security and welfare of the United States require that this and future generations of American youth be assured ample opportunity for the fullest development of their intellectual capacities, and that this opportunity will be jeopardized unless the Nation's colleges and universities are encouraged and assisted in their efforts to accommodate rapidly growing numbers of youth who aspire to a higher education. The Congress further finds and declares that these needs are so great and these steps so urgent that it is incumbent upon the Nation to take positive and immediate action to meet these needs through assistance to institutions of higher education, including graduate and undergraduate institutions, junior and community colleges, and technical institutes, in providing certain academic facilities."

There was ample rational basis in the evidence before Congress for such findings. We do not believe it to be within our competence to question such findings. *United States* v. *Gainey*, 380 U.S. 63, 66-68 (1965); *Katzenbach* v. *McClung*, 379 U.S. 294, 303-304 (1964); *Tot* v. *United States*, 319 U.S. 463, 466 (1943). We hold, based on Congress' declaration of policy and findings, that the Act has the secular purpose of increasing the student enrollment capacity of the Nation's institutions of higher education —an existing urgent public need—and that the Act does not have the purpose of promoting religion of any kind.

The Act also meets the second requirement of a primary effect that neither advances nor inhibits religion. The focus of this test as applied in *Allen* is the function, secular or religious, which the government aid subsidizes—not the nature of the institution, secular or religious, which receives the aid.[14] In *Allen*, the Court noted that it long had recognized that church related educational institutions pursue two goals: secular education and religious instruction. 392 U.S. at 245-48.

The history of church related educational institutions in this Country reflects this dual function. Legislative, judicial, and prevailing social attitudes demonstrate beyond question that church related educational institutions play a large and vital role in providing secular education. Legis-

14. In *Horace Mann League* v. *Board of Public Works*, 242 Md. 645, 220 A.2d 51, *cert. denied, appeal dismissed*, 385 U.S. 97 (1966), the Maryland Court of Appeals held that the constitutionality of direct construction grants under the establishment clause depended on whether the recipient institution was "sectarian". We believe this holding is inconsistent with the controlling *Allen* secular purpose and primary effect test.

lative and judicial determinations have long established that a state's interest in secular education does not require that all children attend publicly operated schools; attendance at church related schools satisfies state compulsory education laws provided the schools meet state secular education requirements. The Supreme Court summarized in *Allen, supra*, at 247-48, from the standpoint of the constitutional standard applied in that case, the relationship of the sectarian function to the secular education function of private schools, including parochial schools:

> "Underlying these cases, and underlying also the legislative judgments that have preceded the court decisions, has been a recognition that private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience. Americans care about the quality of the secular education available to their children. They have considered high quality education to be an indispensable ingredient for achieving the kind of nation, and the kind of citizenry, that they have desired to create. Considering this attitude, the continued willingness to rely on private school systems, including parochial systems, strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that those schools do an acceptable job of providing secular education to their students. This judgment is further evidence that parochial schools are performing, in addition to their sectarian function, the task of secular education."

The Act before us was carefully drafted to insure that grants made to church related educational institutions would subsidize the secular rather than the religious functions of such institutions. It authorizes grants only for the

construction of academic facilities to be used for secular purposes; and specifically prohibits grants for the construction of any facility to be used for religious instruction or worship.[15] In addition, there are other provisions of the Act and administrative regulations which insure that facilities constructed with federal grants are and will be used only for secular purposes.[16] We hold that the Act has a primary effect that neither advances nor inhibits religion.

For the reasons stated above, we conclude that plaintiffs' claim that the Act and grants to defendant colleges and universities for construction of academic facilities impair their rights under the establishment clause is without merit.

FREE EXERCISE CLAUSE CLAIM

Plaintiffs also claim that the Act and grants impair their rights under the free exercise clause on the ground that they effect compulsory taxation for religious purposes.

Since the Act has a secular legislative purpose and a primary effect which neither advances nor inhibits religion, it cannot be said to effect taxation for religious purposes. Moreover, a legislative enactment does not abridge the free exercise clause unless it has a coercive effect on an individual in the practice of his religion. Plaintiffs have not shown that the Act coerces them as individuals in the practice of their religion in any way. *Allen, supra,* at 248-49;

15. 20 U.S.C. §751(a)(2) (1964).

16. 20 U.S.C. §754 (1964); 45 C.F.R. §170.14 (1969); Plaintiffs' Exhibits 125 and 126.

Schempp, supra, at 223; *Lemon, supra*, at —— (slip opinion at 25-27). Therefore, plaintiffs' free exercise claim is without merit.

We are mindful of the centuries of human struggle that culminated in the sixteen cryptic words which constitute the establishment and free exercise clauses of the First Amendment; and we have profound respect for the framers of the Bill of Rights and their determination to erect a wall between church and state which must be kept high and impregnable.[17]

We also recognize the strong national policy of providing higher education for the burgeoning numbers of young men and women who aspire to and are qualified for a higher education.[18] Providing such education may well be critical to the survival of this Nation.

It would be ironic indeed if this Act of Congress, so specifically intended and precisely written to comply with the constitutional standard of a secular legislative purpose and a primary effect that neither advances nor inhibits religion, were to be stricken down in the name of religious freedom. Our careful study of the Act, its legislative history and the entire record before us leaves us with a strong conviction that the Act and the grants do not violate the establishment clause or the free exercise clause of the First Amendment.

In short, here we find no conflict between preservation of religious freedom and provision of higher education. Without both, we may end up with neither.

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17. *Everson* v. *Board of Education*, 330 U.S. 1, 18 (1947).

18. See Preamble To Higher Education Facilities Act of 1963, *supra* note 13.

CONCLUSIONS

We hold that:

(1) The Court has jurisdiction over the subject matter and the parties.

(2) The Act authorizes the grants made to defendant colleges and universities for construction of academic facilities.

(3) The Act and grants thereunder do not impair plaintiffs' rights under the establishment clause or the free exercise clause of the First Amendment.

(4) The Act and grants thereunder do not discriminate against non-sectarian institutions by depriving them of federal funds in violation of the First and Fourteenth Amendments.

(5) Plaintiffs are not entitled to injunctive relief against defendants.

(6) Defendants are entitled to judgment dismissing the complaint, but without costs.

This opinion, together with the separately stated Findings of Fact and Conclusions of Law filed herewith, constitute the Court's findings of fact and conclusions of law pursuant to Rule 52(a), Fed. R. Civ. P.

Defendants' motions to dismiss, which were made at the close of plaintiffs' opening statement and at the close of plaintiffs' case, are denied. Various motions to strike evidence upon which the Court reserved decision, are de-

nied insofar as they are directed at evidence which supports the Court's findings of fact and conclusions of law; in all other respects, the motions are dismissed as moot.

Dated at Hartford, Connecticut, this 19th day of March, 1970.

J. JOSEPH SMITH

J. JOSEPH SMITH
United States Circuit Judge

WILLIAM H. TIMBERS

WILLIAM H. TIMBERS
United States District Judge

M. JOSEPH BLUMENFELD

M. JOSEPH BLUMENFELD
United States District Judge

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 12,767

ELEANOR TAFT TILTON, MILDRED H. CLARK, CAROL D. GOLDSTONE, THEODORE GURNEY, HARVEY L. RAISNER, ELISABETH R. SWAIN, WYMAN W. PARKER, PAUL A. REYNOLDS, RUFUS BLANSHARD, JAY S. ROTH, CARL W. SCHAEFER, NORMAN T. DAVID, HERBERT T. GOLDSTONE, JAMES W. GARDNER, JR., CHARLES L. PENDLETON,

Plaintiffs,

vs.

ROBERT H. FINCH, Secretary of the United States Department of Health, Education and Welfare, JAMES E. ALLEN, JR., Commissioner of Education of the United States, MARVIN K. PETERSON, Chairman of the Commission on Aid to Higher Education of the State of Connecticut, SACRED HEART UNIVERSITY, ANNHURST COLLEGE, FAIRFIELD UNIVERSITY, ALBERTUS MAGNUS COLLEGE,

Defendants.

The Court, after full hearing, makes the following Findings of Fact and Conclusions of Law which, together with the Court's opinion filed herewith, constitute the Court's findings of fact and conclusions of law pursuant to Rule 52(a), Fed. R. Civ. P.

FINDINGS OF FACT

(A) The Parties

(1) Plaintiffs are fifteen residents and citizens of the United States and of Connecticut; they are federal taxpayers suing for themselves and others similarly situated; and as taxpayers they have standing to sue.

(2) Defendant Robert H. Finch is Secretary of the Department of Health, Education and Welfare of the United States; in that capacity he has executive responsibility for the operation of federal programs relating to education.

(3) Defendant James E. Allen, Jr. is Commissioner of Education for the United States (Commissioner); in that capacity he is in charge of the Office of Education of the United States (Office of Education), which administers and supervises various federal programs relating to education and assistance thereof.

(4) Defendant Marvin K. Peterson is Chairman of the Connecticut Commission on Aid to Higher Education (Connecticut Commission), which was created to implement the State's participation in the Higher Education Facilities Act of 1963, 20 U.S.C. §§701-58 (1964) (the Act).

(5) Defendant Sacred Heart University is a coeducational liberal arts university located in Fairfield, Connecticut.

(6) Defendant Annhurst College is a liberal arts college for women located in Woodstock, Connecticut.

(7) Defendant Fairfield University is a liberal arts university for men located in Fairfield, Connecticut.

(8) Defendant Albertus Magnus College is a liberal arts college for women located in New Haven, Connecticut.

(B) Statutory Scheme

(9) In 1963, Congress enacted the Higher Education Facilities Act. Title I of the Act (Title I), 20 U.S.C. §§701-21 (1964), authorizes grants of federal funds to institutions of higher education for construction of undergraduate academic facilities.

(10) An institution of higher education is eligible for a Title I grant for construction of an academic facility only if construction of such facility will result in an urgently needed substantial expansion of the institution's student enrollment capacity or of its capacity to carry out one of the other purposes of the Act. 20 U.S.C. §716 (1964).

(11) An "institution of higher education" is defined in the Act as one which:

(a) admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent thereof;

(b) is legally authorized within the State to provide a program of education beyond high school;

(c) is a public or other nonprofit institution;

(d) provides an educational program for which it awards a bachelor's degree; or provides not less than a two-year educational program which is ac-

ceptable for full credit toward a degree; or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(3) is accredited by a nationally recognized accrediting agency or association approved for that purpose by the Commission or meets one of the alternatives thereto. 20 U.S.C. §751(f) (1964).

(12) The Act specifically excludes from its definition of academic facilities "any facility used or to be used for sectarian instruction or as a place of religious worship, or * * * any facility which (although not a facility described in the preceding clause), is used or to be used primarily in connection with any part of the program of a school or department of divinity. * * *" 20 U.S.C. §751(a) (2) (1964).

(C) Regulatory Scheme

(13) A State desiring to participate in the Title I grant program must designate a State agency which is broadly representative of the public and of institutions of higher education within the State and must submit to the Commissioner, through that agency, a State plan for participation in the program. 20 U.S.C. §715(a) (1964).

(14) The State of Connecticut designated, as the State agency responsible for administration of the State's re-

sponsibilities under Title I, the Connecticut Commission, which is broadly representative of the public and of institutions of higher education in the State.

(15) In 1964, the Connecticut Commission adopted a State plan for participation in the Title I grant program; the plan was submitted to and approved by the Commissioner; the plan complies with all pertinent provisions of the Act.

(16) The Connecticut Commission receives applications for Title 1 grants from institutions of higher education throughout the State of Connecticut.

(17) In accordance with the procedures of the Connecticut Commission, applications for grants are submitted on forms provided by the Commissioner.

(18) Instructions which accompany applications for use in their preparation and submission emphasize that academic facilities to be used for sectarian instruction, religious worship or primarily in connection with any part of the program of a school or department of divinity are not eligible for grants; in each application the institution applying for a grant gives certain assurances, including assurances that no part of the areas included in the proposed project will be used for such proscribed purposes.

(19) The Connecticut Commission employs a staff which reviews the applications to determine whether they meet various statutory criteria of eligibility, the requirements of the Commissioner and the requirements of the State plan adopted by the Connecticut Commission.

(20) Applications which are found to meet the statutory criteria of eligibility are then evaluated by the Connecticut Commission with respect to several factors contained in the State plan to determine the relative priorities of eligible projects for proper allocation of federal funds available to Connecticut in a particular fiscal year. The setting of relative priorities among eligible projects is specifically required by the Act. 20 U.S.C. §717(a) (1964). The factors taken into account by the Connecticut Commission in setting the relative priorities are the projected future enrollment increases at an institution (both numerical and percentage); the institution's projected increase in facilities (both numerical and percentage); and the institution's utilization of facilities (which is determined according to a capacity/enrollment ratio, average weekly use of classrooms and average weekly use of laboratories). Consideration of these factors is intended to assure that the limited federal funds available for Title I projects will be awarded for those projects for which there is an urgent need consistent with the purposes of the Act.

(21) Based on the procedures described above in paragraphs (16) through (20), the Connecticut Commission decides which projects to recommend for grants and the amounts of the grants to be recommended. The recommendations of the Connecticut Commission are forwarded to the Commissioner for further review.

(22) The Office of Education maintains a staff which reviews the recommendations for grants from several state agencies. The Office of Education seeks to assure itself that the applicant has complied with all applicable provisions of the Act and regulations promulgated thereunder,

including the requirement that no eligible portion of a federally funded facility be used for religious worship or sectarian instruction or in connection with the program of a school or department of divinity.

(23) A grant under Title I is not approved unless the Office of Education is satisfied on the basis of its review of each application that the provisions of the Act and the regulations have been complied with. Where necessary or appropriate to the making of this determination, other information supplied by an applicant or otherwise available to the Office of Education is also taken into consideration.

(24) Successful applicants, upon being notified directly by the Office of Education that their grants have been approved, then execute a "Grant Agreement" which signifies their acceptance of the federal financial assistance.

(25) Thereafter, before grant funds may be disbursed, the following steps must be taken:

(a) Final working drawings and specifications of the funded facility must be submitted to and approved by the Commissioner.

(b) Standard "Terms and Conditions", incorporated into all grant agreements, must be satisfied.

(D) The Grants

(26) Sacred Heart University submitted an application to the Connecticut Commission for a Title I grant for construction of a new library.

(27) Annhurst College submitted an application to the Connecticut Commission for a Title I grant for construc-

tion of a new music, drama and arts building with an auditorium to be used for general academic programs.

(28) Fairfield University submitted an application to the Connecticut Commission for a Title I grant for construction of a new library building.

(29) Fairfield University also submitted an application to the Connecticut Commission for a Title I grant for construction of a new science building to house the biology, chemistry, mathematics and physics departments, the computer instructional and research division and some biology-related functions of the psychology department; the grant requested was for construction of the science building minus the computer facilities.

(30) Albertus Magnus College submitted an application to the Connecticut Commission for a Title I grant for construction of academic facilities to be located in a general academic building containing classrooms, faculty and administrative offices, faculty seminar room, student study area, language laboratories and adjoining offices and necessary related service and maintenance facilities; the grant was requested for construction of tw olanguage laboratories and adjoining offices and necessary related service facility in the general academic building.

(31) Each of these applications affirmatively demonstrated that the grant for which application was made would result in an urgently needed substantial expansion of the institution's student enrollment capacity and would be used solely for construction of secular academic facilities.

(32) Each of these applications affirmatively demonstrated that the grant for which application was made would be used only for construction of the facility specified therein; and that no part of any funds granted would be used to defray any part of the cost of any facility used or to be used for sectarian instruction or as a place for religious worship, or for any facility used or to be used primarily in connection with any part of the program of a school or department of divinity.

(33) The Connecticut Commission properly recommended each of these applications and transmitted them to the Office of Education which in turn properly approved each of them.

(34) Sacred Heart University has been the recipient of a Title I grant in amount of $367,100 for construction of a library which has been completed.

(35) The Sacred Heart University Library opened in November, 1968. The University presented evidence that no classes have been conducted in the library; that no restrictions have been imposed on the books that may be acquired for the library; that no religious worship or services have been conducted in the library; and that there are no religious symbols or plaques in or on the library. Plaintiffs presented no evidence to the contrary. The Sacred Heart University Library, and the federal funds which assisted its construction, have been used solely for non-religious purposes.

(36) Annhurst College has been the recipient of a Title I grant in amount of $444,182 for construction of a fine arts

building with an auditorium which is currently under construction.

(37) The Annhurst College Fine Arts Building was scheduled for occupancy sometime after January, 1970. The College presented evidence that the building will be used for courses in music, art and drama; that no religious worship or services will be conducted in the building; and that there will be no religious symbols or plaques in or on the building. Plaintiffs presented no evidence to the contrary. The Annhurst College Fine Arts Building, and the federal funds which are assisting its construction, will be used solely for non-religious purposes.

(38) Fairfield University has been the recipient of two Title I grants. The first was in amount of $500,000 for construction of a library which has been completed. The second was in amount of $537,500 for construction of a science building which is currently under construction.

(39) The Fairfield University Library opened in September, 1968. The University presented evidence that the library has been used only for the purposes stated in its grant application; that no restrictions have been imposed on the books that may be acquired for the library; that no classes have been conducted in the library; that no religious worship or services have been conducted in the library; and that there are no religious symbols or plaques in or on the library. Plaintiffs presented no evidence to the contrary. The Fairfield University Library, and the federal funds which assisted its construction, have been used solely for non-religious purposes.

(40) The Fairfield University Science Building, which was under construction at the time of trial, is scheduled to be completed in February, 1971. The University has represented to the federal government that the building will house its physics, chemistry, mathematics and biology departments, a portion of its psychology department, and a computer center. The University presented evidence that no limitations, religious or otherwise, will be imposed on the content of the courses that will be taught in the new building; that no religious worship or services will be conducted in the building; and that there will be no religious symbols or plaques in or on the building. Plaintiffs presented no evidence to the contrary. The Fairfield University Science Building, and the federal funds which are assisting its construction, will be used solely for non-religious purposes.

(41) Albertus Magnus College has been the recipient of a Title I grant in amount of approximately $21,000 for construction of a language laboratory which has been completed.

(42) The Albertus Magnus College Language Laboratory became operational in 1966. It has been used by students in modern foreign language courses as a means of improving their pronunciation. The College presented evidence that the language laboratory has been used for no purpose other than to assist students in improving their pronunciation; that the language laboratory has been used only for the purposes stated in the grant application; that no religious worship or services have been conducted the language laboratory, and that there are no religious symbols or plaques in or on the language laboratory.

Plaintiffs presented no evidence to the contrary. The Albertus Magnus College Language Laboratory, and the federal funds which assisted its construction, have been used solely for non-religious purposes.

CONCLUSIONS OF LAW

(1) The Court has jurisdiction over the subject matter and the parties.

(2) This action is an adversary one presenting a justiciable controversy between the parties.

(3) Plaintiffs as federal taxpayers are properly representative of the class on behalf of which they sue and have standing to maintain this action.

(4) Defendant government officials are the principal persons charged with the responsibilities, state and federal, of administering the Act.

(5) Defendant church related colleges and universities are recipients under the Act of grants for construction of academic facilities.

(6) In compliance with the Act and regulations promulgated thereunder, each of the grants in question has been properly approved by the Office of Education of the United States, following proper recommendation by the Connecticut Commission on Aid to Higher Education, such approvals and recommendations having been based upon applications affirmatively demonstrating that the grant in each instance would result in an urgently needed substantial expansion of the institution's student enrollment capacity and would be used solely for construction of secular academic facilities.

(7) The Act authorises the grants made to defendant colleges and universities for construction of academic facilities.

(8) The Act and grants thereunder do not impair plaintiffs' rights under the establishment clause or the free exercise clause of the First Amendment.

(9) The Act and grants thereunder do not discriminate against non-sectarian institutions by depriving them of federal funds in violation of the First and Fourteenth Amendments.

(10) Plaintiffs are not entitled to injunctive relief against defendants.

(11) Defendants are entitled to judgment dismissing the complaint on the merits.

(12) No costs shall be taxed against any party to this action.

Dated at Hartford, Connecticut, this 19th day of March, 1970.

J. JOSEPH SMITH

J. JOSEPH SMITH
United States Circuit Judge

WILLIAM H. TIMBERS

WILLIAM H. TIMBERS
United States District Judge

M. JOSEPH BLUMENFELD

M. JOSEPH BLUMENFELD
United States District Judge

IN THE DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

[Caption omitted in printing]

JUDGMENT

This cause having been heard on its merits before a Three-Judge District Court on December 2, 3, 4 and 5, 1969 and January 22, 1970; and

The Court having filed its opinion, findings of fact and conclusions of law herewith; it is

ORDERED, ADJUDGED and DECREED:

(1) That judgment be, and it hereby is, entered on the merits in favor of defendants, denying all relief sought by plaintiffs and dismissing the complaint.

(2) That no costs shall be taxed against any party to this action.

Dated at Hartford, Connecticut, this 19th day of March, 1970.

/s/ J. Joseph Smith
United States Circuit Judge

/s/ William H. Timbers
United States District Judge

/s/ M. Joseph Blumenfeld
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Caption omitted in printing]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that the Plaintiffs in the above captioned matter do hereby appeal to the Supreme Court of the United States from the final judgment dismissing the

complaint herein, entered in this action on March 19, 1970. This appeal is taken pursuant to Title 28 of the United States Code, Section 1253.

II. Pursuant to the provisions of Rule 12 (1) of the Supreme Court of the United States, the Clerk is requested to certify and to transmit to the Supreme Court of the United States the entire record of the proceedings herein.

Dated: April 8, 1970

/s/ Leo Pfeffer
Counsel for all Plaintiffs
15 East 84th Street
New York, N. Y. 10028

/s/ Peter L. Costas
Attorney for all Plaintiffs
111 Pearl Street
Hartford, Connecticut 06103

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

[Caption omitted in printing]

STIPULATION AS TO DEFENDANTS ROBERT H. FINCH AND JAMES E. ALLEN, JR.

Plaintiffs and Defendants Robert H. Finch and James E. Allen, Jr., by their counsel, stipulate to the following facts. Counsel for the Plaintiffs and counsel for Defendants Robert H. Finch and James E. Allen, Jr. further agree that their stipulation to the facts set forth below is entered into without prejudice to their right to object to the relevancy or materiality of any fact to be stipulated and in no way limits their right to present at trial, through testimony or documents evidence to explain or provide a context for the facts so stipulated or evidence pertaining to other issues of fact which are relevant to the legal questions in this litigation.

1. Defendant Robert H. Finch is Secretary of Health, Education and Welfare and, in such capacity, has executive responsibility for the operation of federal programs relating to education, *inter alia*. Defendant James E. Allen,

Jr. is Commissioner of Education for the United States (hereinafter referred to as "Commissioner") and is in direct charge of the Office of Education of the United States (hereinafter referred to as "Office of Education"), which directly administers and supervises the operation of various federal programs relating to education and assistance thereof. The Commissioner reports to Secretary Finch.

2. In 1963, the Congress of the United States enacted the Higher Education Facilities Act of 1963, P.L. 88-204 (together with its amendments hereinafter referred to as "the Statute"), which authorized the Commissioner to "* * * carry out a program of grants to institutions of higher education for the construction of academic facilities."

Title I of the Statute provides for grants for construction of academic facilities to be used primarily in connection with undergraduate programs; Title II provides for grants for construction of graduate academic facilities; Title III provides for loans and interest subsidy grants for construction of both graduate and undergraduate academic facilities; and Title IV, *inter alia*, covers general provisions applicable to administration of the foregoing titles.

3. Congress has provided appropriations for grants under Title I for the fiscal years ending June 30, 1964 through June 30, 1969, in the following amounts:

FISCAL YEARS ENDING	AMOUNTS
1964	none
1965	$230,000,000
1966	458,000,000
1967	453,000,000
1968	400,000,000
1969	83,000,000

A portion of the appropriated funds has been earmarked by Congress for the academic facilities at public community colleges and public technical institutes. This earmarked por-

tion was 22 per cent of the appropriated funds for the fiscal years ending before July 1, 1967, 25 per cent of the appropriated funds for the fiscal years ending June 30, 1968, and 60.3 per cent of the appropriated funds for the fiscal years ending thereafter.

4. Title I of the statute requires that a state wishing to participate in the grant program must designate or establish a state agency "which is broadly representative of the public and of institutions of higher education * * *" and the state must submit through such agency a "* * * State plan for such participation * * *". The Commissioner must approve any such plans which meets the conditions set forth in § 105(d) of the Statute, 20 U.S.C. 715(a).

Pursuant to this requirement, the State of Connecticut initially designated the Commission on Cooperation with Federal Authorities in Matters Pertaining to Higher Education and subsequently the Connecticut Commission on Aid to Higher Education (hereinafter referred to as "Connecticut Commission"). State plans have been submitted by such Connecticut Commission and have been approved by the Commissioner.

5. The Commissioner grants funds to institutions of higher education for projects which are approved and recommended by a commission designated by a state and which meet the requirements of the Statute.

Pursuant to the statutory plan of operation, the Connecticut Commission has made recommendations for grants to the Commissioner and these recommendations have been accepted and grants made by the Commissioner except as follows:

a) In the recommendations of the Connecticut Commission for the period closing February 1, 1967, Wesleyan Univeristy was recommended for a partial grant of $122,792 towards the construction of a lecture hall and the mathematics portion of a science center, and Trinity College was recommended for a grant of $500,000 towards the construc-

tion of a physical education facility. Upon review within the Office of Education, it was determined that these projects were not eligible because of the lack of an urgent need for the facilities contemplated; accordingly, these grant applications were denied and the funds therefor were made available for other projects in the State of Connecticut recommended by the Connecticut Commission.

b) In some cases, the Office of Education in its review has identified certain ineligible project costs. This resulted in the approval of an amount less than that recommended by the Connecticut Commission.

6. Section 401(a)(2) of the Statute excludes from eligible facilities, *inter alia*, " * * * (C) any facility used or to be used for sectarian instruction or as a place for religious worship, or (D) any facility which (although not a facility described in the preceding clause) is used or to be used primarily in connection with any part of the program of a school or department of divinity * * *. For the purposes of this subparagraph, the term 'school or department of divinity' means an institution, or a department or branch of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation or to prepare them to teach theological subjects."

7. Section 404 of the Statute provides that the Federal interest in a project will expire at the end of twenty years following the completion of the construction which is the subject of the grant. Section 404(b) further provides:

> If, within twenty years after completion of construction of an academic facility which has been constructed in part with a grant or grants under subchapter I or II of this chapter–
>
> (1) the applicant (or its successor in title or possession) ceases or fails to be a public or nonprofit institution, or
>
> (2) the facility ceases to be used as an academic facility, or the facility is used as a facility

> excluded from the term "academic facility" by section 751(a)(2) of this title,
>
> the United States shall be entitled to recover from such applicant (or successor) an amount which bears to the then value of the facility (or so much thereof as constituted an approved project or projects) the same ratio as the amount of such Federal grant or grants bore to the development cost of the facility financed with the aid of such grant or grants.
> * * *

8. The Office of Education has published regulations and other issuance for use by state commissions and for use by applicants. It has also published memoranda, application forms, grant agreement forms and various other forms.

9. A staff is maintained within the Office of Education to prepare various publications and regulations to review applications for grants and the recommendations for grants from the several state commissions, to review state plans and to deal with various other administrative, fiscal and legislative matter.

The present regulations of the Office of Education dealing with the Statute are set forth in Part 170 of Title 45 of the Code of Federal Regulations and were published in the FEDERAL REGISTER, Volume 31, No. 199, on October 13, 1966. A copy of these regulations is appended hereto as Exhibit HEW-1.

The current application form to be utilized by an applicant institution is appended hereto as Exhibit HEW-2 and the current instruction form to be utilized in the preparation of the application is appended hereto as Exhibit HEW-3.

A copy of the current form of grant agreement with a successful applicant institution of higher education is appended hereto as Exhibit HEW-4.

A copy of the current "Terms and Conditions" incorporated in the grant agreement is appended hereto as Exhibit HEW-5.

10. The Office of Education reviews the recommendations of the Connecticut Commission and the applications for grants recommended by the Connecticut Commission. As a result of the recommendations of the Connecticut Commission and such review by the Office of Education, the following grants have been made by the Commissioner under Title I of the Statute to institutions within the State of Connecticut during the period July 1, 1964 through June 30, 1968, inclusive:

INSTITUTION	GRANT
1965 Fiscal Year	
University of Connecticut (Hartford Branch)	$ 520,836
Quinnipiac College	468,204
Willimantic State College	350,000
Annhurst College	277,913
Danbury State College	466,667
University of Hartford	500,000
University of Connecticut	340,521
Total:	2,924,141
1966 Fiscal Year	
Manchester Community College	$ 98,944
Hartford State Technical Institute	500,000
Norwalk Community College	339,596
Thames Valley State Technical Institute	121,645
University of Connecticut	159,479
Fairfield University	500,000
University of Hartford	500,000
Post Junior College Incorporated	372,034
Central Connecticut State College	500,000
Southern Connecticut State College	500,000
Danbury State College	376,667
New Haven College	434,361

Willimantic State College	415,702
Mitchell College	433,333
Albertus Magnus College	24,632
University of Connecticut	342,113
Connecticut College for Women	289,121
Total	5,907,627

1967 Fiscal Year

Manchester Community College	$ 62,039
Thames Valley State Technical Institute	37,246
Waterbury State Technical Institute	244,071
Connecticut College for Women	210,879
Sacred Heart University	367,100
University of Connecticut	545,848
Southern Connecticut State College	586,721
Danbury State College	350,000
Annhurst College	350,697
Trinity College	642,443
Wesleyan University	642,442
University of Bridgeport	642,443
Post Junior College	165,900
University of Connecticut	336,390
University of Hartford	642,443
Total	5,826,662

1968 Fiscal Year

Thames Valley State Technical College	$ 315,189
University of Connecticut	448,080
Central Connecticut State College	500,000
Eastern Connecticut State College	500,000
Fairfield University	242,665
Hartford College for Women	265,182
Mitchell College	21,667
New Haven College	146,666

Southern Connecticut State College	500,000
Western Connecticut State College	500,000
	3,439,339

11. Annual Reports of the Office of Education published with respect to grants made for the fiscal years ending June 30, 1965 through June 30, 1968 are appended hereto as Exhibits HEW-6, HEW-7, HEW-8 and HEW-9. The symbol "P" signifies a public institution and the symbol "N" signifies a non-public institution in the lists compiled as part of the annual reports referred to above.

12. The review form currently used by the Office of Education in the consideration of applications from institutions of higher education for grants under Title 1 is appended hereto as Exhibit HEW-10.

13. A grant under Title I of the Higher Education Facilities Act is not approved unless the Office of Education is satisfied on the basis of its review of each application that the provisions of the Act and Regulations are met. Where necessary or appropriate to the making of this determination, other information supplied by an applicant or otherwise available to the Office of Education is also taken into consideration. A check list form (College Facilities Application Review Form, a copy of which is appended hereto as Exhibit HEW-10) is ordinarily used to facilitate the initial review of the application. The Office of Education approves only applications which indicate that

1. The applicant complies with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Regulations of the President issued pursuant thereto (45 CFR Part 80).
2. The application meets the definition of an "institution of higher education" as defined in Section 401(f) of the Act (20 U.S.C. 751(f)). That is:
    a. admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

b. is legally authorized within the State to provide a program of education beyond high school;

c. is a public or other non-profit institution;

d. provides an educational program for which it awards a bachelor's degree; or provides not less than a two-year educational program which is acceptable for full credit toward a degree; or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at semi-professional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

e. is accredited by a nationally recognized accrediting agency or association approved for that purpose by the Commissioner or meets one of the alternatives thereto set forth in § 401(f)(5) (20 U.S.C. 751 (f)(5));

3. The applicant has satisfactorily demonstrated that the area included in a Title I project is 80% or more for undergraduate use or is to be used predominantly for one of the other purposes set forth in § 106 (20 U.S.C. 716, 45 CFR 170.13);

4. There is firm evidence that the project contributes to a substantial expansion of student enrollment capacity or capacity to carry out one of the other purposes set forth in Section 106 (20 U.S.C. 716);

5. Such expansion can be shown to be urgently needed;

6. The areas included in the project are identifiable "academic facilities" as defined in Section 401(a) of the Act. (The cost of constructing those portions of a facility not so identified on account of

the exclusions set forth in § 401(a)(2) are borne by the applicant, and the amount of Federal financial assistance to be provided is determined according to the estimated eligible development cost of the project.) In some cases this involves a determination as to whether facilities will be used for sectarian instruction or whether the institution or department of the institution is an institution or department whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation or to prepare them to teach theological subjects;

7. The applicant has or will have sufficient funds to cover the non-federal share of the project.

In addition to the foregoing, other statutory and regulatory conditions must be met. These conditions relate to such matters as whether a cost is eligible in terms of having been incurred within the proper time period, whether the applicant has available sufficient funds to meet the non-federal share of a project, whether the applicant has a sufficient interest in the site to assure undisturbed use and possession for not less than 75 years, and whether the project or any portion thereof will be of elaborate or extravagant design or materials. In addition, certain assurances are given as to future undertakings of the applicant. These include assurances that the porject will be used only as "academic facilities" during the period of the Federal interest, that the wage rates and other labor standards specified by law will be met, that construction contracts will be let on the basis of competitive bidding, and that the equal employment opportunity provisions of E.O. 11246 will be met.

14. A list of the applications which have been wholly denied by the Commissioner under Title I for failure to meet an eligiblity requirement other than those set forth in § 401(a)(2)(C) and (D), i.e., the so-called "religious exclu-

sion" provisions is appended ereto as Exhibit HEW-11. Few situations arise where a ttal rejection of an application is involved. The schools re identified as to whether they are public (P) or private N); none of them are generally associated with the Roman Catholic Church.

An institution upon reviewg the various materials available to it (the Act, regulation bulletins, application form and instructions) may decide,n its own motion or after an informal conversation or nference with the State Commission or representatives of ıe Office of Education, not to even submit an applicatio on account of a failure to meet some eligibility requirement, or to remove from the project application those area which are ineligible for one or more reasons for support.

Applications which are suhitted to the State Commission are reviewed by it both or completeness and for the purpose of assessing whether ny eligibility questions are raised. An applicant might thdraw its application at this point or substantially modify it solely on the advice of the State Commission, or, in accordance with § 170.14 of the Regulations, a question of eligibility might be forwarded to the Commissioner.

Additionally, an applicati may fail at the State level by virtue of the fact that it not accorded a high enough priority in accordance withhe criteria set forth in the State plan for determining sh priorities to qualify for a portion of the States' allotment. Lists of applications submitted to State Commissiorduring the fiscal year 1969 which fall into this categorye appended hereto as Exhibit HEW-12. The breakdown to the religious group with which a college is affiliated based on information made available to the National Cter for Educational Statistics, U.S. Office of Education.

15. Additional procedur utilized under Title I to insure that facilities constructed vh Federal assistance will not be and are not used for se(rian instruction, religious worship or primarily in connecon with any part of the pro-

gram of a school or department of divinity (as defined in § 401(a)(2) including the following:

A. Advice to applicants

In Part P of each application for Federal assistance under Title I of the Statute (OE Form 1031, appended hereto as Exhibit HEW-2), the institution assures the Untied States Commissioner that:

> "No part of the areas included in the proposed project * * * will be used for sectarian instruction or as a place for religious worship or primarily in connection with any part of the program of a school or department of divinity (as defined in P.L. 88-204 * * *"

The instructions to accompany OE Form 1031 appended hereto as Exhibit HEW-3, for preparation and submission of the application emphasize on page 21 that only academic facilities as defined in the Statute may be included in the project, and identify by direct quotation from the Act those facilities which are specifically excluded from eligibility. The applicant is further cautioned on page 39 of these instructions that:

> "Special attention should be given to Assurance 3(B) [in Part P of the application] to be sure that it is clearly understood that space to be used at *any time* for sectarian or devotional purposes is not eligible assignable area. Such space should, of course, be prorated out of the project. The representations made in applications are incorporated by reference as part of a grant and loan agreement."

B. At the State Level

Prior to determining priorities and Federal shares, a State Commission reviews applications submitted to it for possible questions of eligibility including questions as to whether the facilities covered by the application do or do not qualify as academic facilities on account of the exclusions set forth in § 401(a)(2)(C) and (D). In any case where in the opinion of the State Commission such a question may be

raised, the State Commission forwards a copy of the application to the Office of Education for clarification of such a question.

C. At the Federal Level

The Office of Education, in addition to resolving questions of eligibility forwarded to it by State Commissions, undertakes a detailed review of the application and accompanying plans.

It is at this time that areas of a proposed construction project are identified as to the specific planned use, and any areas identifiable with sectarian instruction or religious worship or as part of the program of a school or department of divinity are classified as ineligible for Federal financial assistance and the amount of the grant or loan to be awarded adjusted accordingly. Similar controls are applied during the review of movable equipment lists, at which time financial assistance is approved for items of equipment to be placed only in eligible areas of the constructon project.

A determination that the institution as a whole is to be characterized as a school of divinity or that the school or department for which the facility is to be constructed should be so characterized will, of course, result in the rejection of the entire application.

Where such may be the case the Office of Education seeks the advice of the Office of the General Counsel except in cases where advice previously given is clearly applicable.

Other legislation administered by the Office of Education contains exclusions similar to those set forth in § 401 (a)(2)(C) and (D). Title II of the Higher Education Act of 1965 which provides grants for the acquisition of library book materials, and Title VI of the Higher Education Act of 1965, which provides grants for equipment (under a State plan procedure similar to that under Title I, Higher Education Facilities Act) are examples of such legislation. (See 20 U.S.C. 1027, 1129). A determination under one of these programs might well involve the same questions and, therefore, be dispositive of an eligibility question in

connection with an application for an award under another program including Title I of the Higher Education Facilities Act.

D. Post-grant review

The Office of Education is now engaged in making a series of on-site reviews of completed projects to verify that conditions under which Federal assistance was provided are being implemented. During these visits, class schedules and course descriptions contained in the school catalog are analyzed to ascertain that nothing in the nature of sectarian instruction is scheduled in any area constructed with the use of Federal funds. If there is found to be an indication that a portion of academic facilities constructed with Federal assistance is used in any way for sectarian purposes, either the questionable practice must be terminated or the institution must assume full responsibility for the cost of constructing the area involved. The latter alternative would result in reduction of the eligible development costs of the project and a proportionate reduction in the amount of Federal funds. Conceivably, such a review could also disclose factors which raise a question as to whether the aided facilities are not in fact being used in connection with the program of a school or department of divinity. Should such a finding be made, an applicant's entitlement to any portion of the grant is open to question.

The following cases represent the few instances where an institution used a facility constructed with Fedeal financial assistance provided under Title I of the Statute for sectarian instruction or religious worship, and illustrate the action taken by the Office of Education to assure compliance with the terms of the statute:

1. In 1965, Oklahoma Christian College, Oklahoma City, Oklahoma, was awarded a grant of $67,692 under Section 104 of Title I of the Statute for construction of a portion of a classroom auditorium facility (Project No. 4-7-00296). The total development cost of the project was $561,974 of which

$203,516 was eligible for participation. A newspaper clipping dated October 19, 1966, which was forwarded to the Office of Education indicated that the College was holding chapel services in its new auditorium. On the basis of follow-up discussions with the College, the Office of Education under letter of April 6, 1967, advised that the College must decide either to discontinue using the facility for religious worship or abandon the grant. On June 29, 1967, the College elected to terminate the grant and to refund such grant funds as had already been received. The grant was officially terminated on November 9, 1967, and the institution paid the final installment of the required refund on April 22, 1968, thus closing the account.

2. A grant of $86,863 was made in 1965 under Section 104 of Title I of the Statute to Ohio Valley College, Parkersburg, West Virginia, for construction of a library and general purpose classroom addition to an existing building. A Title III loan of $110,000 was also made. The general purpose classroom was essentially a small auditorium with movable partitions for subdividing it into several classrooms. The total development cost of the project was $263,108 with an eligible development cost of $260,591. The College scheduled daily chapel services in the auditorium and conducted courses in homiletics in the classrooms. Both uses are contrary to Section 401(a)(2)(C) of the Act. The question of compliance with restrictions on the use of academic facilities constructed with Federal financial assistance was brought to the attention of the Office of Education by the General Accounting Office which noted such use during the course of a routine on-site inspection which took place in April, 1968. The Office of Education by letter dated May 21, 1968 advised the College to discontinue the ineligible use or relinquish so much of the grant and loan as is attributable to such space. The college decided in October, 1968, to build a new chapel and to discontinue the ineligible use of the portion

of the facilities constructed with Federal assistance, thus retaining the full grant and loan.

3. On February 28, 1969, a representative of the Office of Education visited Millsaps College, Jackson, Mississippi, for the purpose of verifying that conditions under which a grant of $74,095 made in 1965 under Section 104 of Title I of the Statute for the renovation of an existing classroom-auditorium building were being met. During the visit the Office of Education representative discussed the College officials restrictions on the use of facilities constructed with Federal financial assistance. The review disclosed that two courses–The History of Methodism and the Organization of the Church–were being conducted in these facilities. The Office of Education advised by letter dated May 6, 1969, that the College should decide whether to transfer all instruction of a sectarian nature to other than project facilities, or to remove from the project those areas in which sectarian instruction is involved and refund to the Federal Government the portion of the grant funds already received. On May 22, 1969, the College agreed to transfer, such instruction to non-federally supported facilities and to comply in the future with the statutory restrictions as to use. The Office of Education accepted the assurance contained in the letter and so advised the institution on June 6, 1969.

16. The following institutions (or departments within institutions) are among those which have been determined under the identified program administered by the Office of Education, to be schools or departments of divinity. In some cases this conclusion is reached because the institution has not submitted information sufficient to make a determination that any facilities, books, equipment or fellowships for that institution or department would not be used primarily in connection with any part of the program of a school or department of divinity. Catholic Schools are designated (RC).

A. Under Title I of the Statute of 1963 (grants for construction of academic facilities; 20 U.S.C. 711).

1. Concordia College, Texas - Preparation for religious vocation.
2. College of Liberal Arts, Jewish University of America, Ill. - Preparation for ministry, and for a religious vocation.
3. Maryglade College, Mich. (RC) - Preparation ofr ministry and for a religious vocation.
4. St. Charles, College, Md. (RC) - Preparation for the ministry and preparation for a religious vocation.
5. St. Charles Borromeo Seminary, Pa. (RC) - Preparation for the ministry.

B. Under Title III of the Statute (Loans for construction of academic facilities; 20 U.S.C. 741).

6. Sacred Heart Junior College, Pa. (RC)
7. Blessed Sacrament College, Pa. (RC)

Both of these institutions (6 and 7) prepare students for a religious vocation.

C. Under Title VI-A of the Higher Education Act of 1965 (Equipment Grants; 20 U.S.C. 1121)

8. Both Jacobs Hebrew Teachers College, N.Y.
9. Hebrew Teachers College, Mass.

Both of these institutions (8 and 9) prepare students to teach theological subjects.

10. Concordia Collegiate Institute, N.Y.
11. Concordia Senior College, Ind.
12. Concordia Teachers College, Ill.
13. Concordia Teachers College, Neb.
14. St. Paul's College, Mo.

These institutions (10 thru 14) are all members of Lutheran Church, Missouri Synod—all prepare students to enter religious vocations.

D. Under Title II of the Higher Education Act of 1965 (Grants for Library books and materials; 20 U.S.C. 1021).

15. Felician College, Ill. (RC)

16. Our Lady of Mercy, Calif. (RC)

Both of these institutions (15 and 16) prepare students to enter upon a religious vocation.

E. Under Title IV of the National Defense Education Act of 1958 (Fellowship for those preparing to become teachers; 20 U.S.C. 462).

17. Columbia University (Department of Religion)

18. Duke University (Graduate Department of Religion)

19. Harvard University (Department of Comparative Religion)

20. Yale University (Department of Religious Studies)

Fellowships for study in these departments (17 thru 20) would be preparing students to teach theological subjects.

F. Under one or more of the foregoing acts.

18. Northwest College of the Assembles of God, Wash. - Preparation for the ministry and for a religious vocation.

17. The plaintiffs are citizens of the United States, residents of Connecticut and taxpayers.

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James E. Allen, Jr.

Portions of Exhibit 2 to stipulation

P. ASSURANCES AND AUTHENTICATION

1. OF ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (FORM HEW 441) COVERING THE INSTITUTION OR BRANCH CAMPUS FOR WHICH THIS APPLICATION IS SUBMITTED (CHECK AND COMPLETE (a) IF THE ASSURANCE HAS BEEN ASSIGNED A NUMBER, AND (b) ONLY IF THE ASSURANCE NUMBER IS NOT YET KNOWN):

☐ (a) HAS BEEN ASSIGNED ASSURANCE NUMBER _____

☐ (b) WAS FILED WITH THE U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ON _____ (DATE), 19__.

2. ALL PARTS AND EXHIBITS CONTAINED IN OR REFERRED TO IN THE APPLICATION FORM ARE SUBMITTED HEREWITH AND MADE A PART OF THIS APPLICATION.

3. THE APPLICANT HEREBY ASSURES THE UNITED STATES COMMISSIONER OF EDUCATION THAT:

(a) IF THIS APPLICATION IS APPROVED, THE CONSTRUCTION DESCRIBED HEREIN WILL BE UNDERTAKEN PROMPTLY AND IN AN ECONOMICAL MANNER AND WILL NOT BE OF ELABORATE OR EXTRAVAGANT DESIGN OR MATERIALS;

(b) NO PART OF THE SPACE INCLUDED IN THE PROPOSED PROJECT: (1) IS INTENDED PRIMARILY FOR EVENTS FOR WHICH ADMISSION IS TO BE CHARGED TO THE GENERAL PUBLIC; (2) IS ESPECIALLY DESIGNED FOR ATHLETIC OR RECREATIONAL ACTIVITIES OTHER THAN FOR AN ACADEMIC COURSE IN PHYSICAL EDUCATION; (3) WILL BE USED FOR SECTARIAN INSTRUCTION OR AS A PLACE FOR RELIGIOUS WORSHIP OR PRIMARILY IN CONNECTION WITH ANY PART OF THE PROGRAM OF A SCHOOL OR DEPARTMENT OF DIVINITY (AS DEFINED IN P.L. 88-204); OR (4) WILL BE USED BY A "SCHOOL OF MEDICINE," "SCHOOL OF DENTISTRY," "SCHOOL OF OSTEOPATHY," "SCHOOL OF PHARMACY," "SCHOOL OF OPTOMETRY," "SCHOOL OF PODIATRY," OR "SCHOOL OF PUBLIC HEALTH" AS THESE TERMS ARE DEFINED IN SECTION 799 OF THE PUBLIC HEALTH SERVICE ACT, OR BY A "SCHOOL OF NURSING" AS DEFINED IN THAT ACT UNDER SECTION 820;

(c) ALL FACILITIES INCLUDED IN THE PROPOSED PROJECT WILL BE USED AS ACADEMIC FACILITIES DURING AT LEAST THE PERIOD OF THE FEDERAL INTEREST OR FOR SO LONG AS THE GOVERNMENT HOLDS ANY OF THE BONDS PURSUANT TO A TITLE III LOAN, WHICHEVER IS LONGER;

(d) ANY FEDERAL FUNDS RECEIVED PURSUANT TO THIS APPLICATION WILL BE USED SOLELY FOR DEFRAYING THE DEVELOPMENT COST OF THE PREFERRED PROJECT;

(e) THE APPLICANT HAS ON HAND, OR IS ASSURED OF OBTAINING, IF THE APPLICATION IS APPROVED, SUFFICIENT FUNDS TO MEET THE NON-FEDERAL PORTION OF THE COSTS OF CONSTRUCTING THE FACILITIES DESCRIBED HEREIN, AND THE APPLICANT WILL COVER ALL COSTS IN EXCESS OF THE AMOUNT PROVIDED FOR IN THE APPLICATION.

(f) CONSTRUCTION CONTRACTS FOR THE CONSTRUCTION COVERED BY THE APPLICATION WILL: (1) PROVIDE THAT LABORERS AND MECHANICS EMPLOYED BY CONTRACTORS AND SUBCONTRACTORS IN THE PERFORMANCE OF WORK ON CONSTRUCTION OF THE FACILITIES BE PAID WAGES AT RATES NOT LESS THAN THOSE PREVAILING ON SIMILAR CONSTRUCTION IN THE LOCALITY AS DETERMINED BY THE SECRETARY OF LABOR IN ACCORDANCE WITH THE DAVIS-BACON ACT, AS AMENDED (40 U.S. C. 276a-276a-5), AND WILL RECEIVE OVERTIME COMPENSATION IN ACCORDANCE WITH AND SUBJECT TO THE PROVISIONS OF THE CONTRACT WORK HOURS STANDARDS ACT (P.L. 87-581), UNLESS A WAIVER IS GRANTED BY THE COMMISSIONER PURSUANT TO SECTION 408(a) OF THE ACT; (2) INCLUDE, AND PROVIDE FOR THEIR INCLUSION IN SUBCONTRACTS, ALL APPLICABLE PROVISIONS REGARDING EQUAL EMPLOYMENT OPPORTUNITY PURSUANT TO EXECUTIVE ORDER 11246; (3) PROVIDE THAT THE CONTRACTOR SHALL FURNISH A PERFORMANCE BOND IN THE AMOUNT OF THE CONTRACT PRICE AND A PAYMENT BOND IN THE AMOUNT OF AT LEAST ONE-HALF OF THE CONTRACT PRICE, UNLESS OTHERWISE AGREED TO BY THE COMMISSIONER IN THE CASE OF SMALL JOBS, AND THAT THE CONTRACTOR SHALL PROVIDE WORKMEN'S COMPENSATION, AND ADEQUATE FIRE, PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE (UNLESS THE APPLICANT MAKES OTHER ARRANGEMENTS FOR ANY OR ALL SUCH INSURANCE); (4) PROVIDE FOR THE MAINTENANCE OF SUCH RECORDS AND COMPLY WITH SUCH OTHER PROCEDURES AS THE COMMISSIONER FINDS NECESSARY TO CARRY OUT HIS RESPONSIBILITIES IN CONNECTION WITH THE IMPLEMENTATION OF THE DAVIS-BACON ACT, AND THE CONTRACT WORK HOURS STANDARDS ACT; AND (5) PROVIDE THAT REPRESENTATIVES OF THE U.S. OFFICE OF EDUCATION AND SUCH OTHER PERSONS AS THE COMMISSIONER MAY DESIGNATE WILL HAVE ACCESS AT ALL REASONABLE TIMES TO WORK WHEREVER IT IS IN PREPARATION OR PROGRESS, AND THE CONTRACTOR WILL PROVIDE PROPER FACILITIES FOR SUCH ACCESS AND INSPECTION;

(g) APPROVAL OF THE FINAL WORKING DRAWINGS AND SPECIFICATIONS FOR THE PROPOSED CONSTRUCTION WILL BE OBTAINED FROM THE COMMISSIONER AND THE ASSURANCE OF THE COMMISSIONER WILL BE OBTAINED BEFORE THE CONSTRUCTION COVERED BY THIS APPLICATION IS ADVERTISED FOR BIDDING;

(h) ALL CONTRACTING FOR NEW CONSTRUCTION, AND FOR REHABILITATION, REMODELING, REMODELING, CONVERSION, OR IMPROVEMENT OF EXISTING STRUCTURES, AND FOR ACQUISITION AND INSTALLATION OF BUILT-IN EQUIPMENT NOT COVERED BY GENERAL CONSTRUCTION CONTRACTS, SHALL BE ON A FIXED PRICE BASIS. ALL SUCH CONSTRUCTION CONTRACTS SHALL BE AWARDED ON THE BASIS OF COMPETITIVE BIDDING OBTAINED BY PUBLIC ADVERTISING;

(i) NO CHANGES WILL BE MADE THAT WILL CAUSE THE PROJECT TO BE SUBSTANTIALLY DIFFERENT FROM THE REPRESENTATIONS MADE IN THE APPLICATION WITHOUT PRIOR APPROVAL FROM THE COMMISSIONER.

CONTINUED ON PAGE 11

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P. ASSURANCES AND AUTHENTICATION (CONTINUED)

(J) ARCHITECTURAL OR ENGINEERING SUPERVISION AND INSPECTION WILL BE PROVIDED AT THE CONSTRUCTION SITE TO INSURE THAT THE COMPLETED WORK CONFORMS TO THE APPROVED PLANS AND SPECIFICATIONS;

(K) IT IS FULLY COGNIZANT OF THE REQUIREMENTS REGARDING ECONOMICAL METHODS OF PURCHASE OF MOVABLE EQUIPMENT IN ACCORDANCE WITH SOUND BUSINESS PRACTICE, AS SET FORTH IN THE APPLICABLE REGULATIONS (45 CFR 170.4), AND ALL MOVABLE EQUIPMENT, THE COST OF WHICH IS TO BE CHARGED TO THE PROJECT, WILL BE PROCURED IN ACCORDANCE WITH SUCH REGULATIONS. IT IS UNDERSTOOD AND AGREED BY THE APPLICANT THAT THE ELIGIBLE PROJECT DEVELOPMENT COST AND THE FEDERAL GRANT OR LOAN AMOUNT MAY BE REDUCED AT SETTLEMENT BY THE COMMISSIONER BASED ON THE AMOUNT OF ANY COSTS CLAIMED UNDER THE PROJECT WHICH ARE FOR ELABORATE OR EXTRAVAGANT EQUIPMENT ITEMS OR WHICH CANNOT BE VERIFIED TO HAVE BEEN INCURRED IN ACCORDANCE WITH THIS ASSURANCE;

(L) ADEQUATE AND SEPARATE ACCOUNTING AND FISCAL RECORDS, AND ACCOUNTS OF ALL MONEYS PROVIDED FROM ANY SOURCE TO PAY THE COST OF THE PROPOSED CONSTRUCTION (INCLUDING NECESSARY SITE ACQUISITION, AND EQUIPMENT); WILL BE MAINTAINED, AND AUDIT OF SUCH RECORDS AND ACCOUNTS WILL BE PERMITTED AT ANY REASONABLE TIME. ALL SUCH RECORDS, INCLUDING ACCOUNTING RECORDS, BANK DEPOSIT SLIPS, CANCELED CHECKS, AND OTHER SUPPORTING DOCUMENTS AND CONTRACT AWARDS AND PURCHASE ORDERS (OR MICROFILM COPIES THEREOF) SHALL BE RETAINED INTACT BY THE APPLICANT, OR WHERE APPLICABLE, BY THE APPLICANT'S BUILDING AGENCY, FOR AUDIT OR INSPECTION BY AUTHORIZED REPRESENTATIVES OF THE FEDERAL GOVERNMENT FOR A PERIOD OF THREE (3) YEARS AFTER COMPLETION OF THE PROJECT OR UNTIL THE APPLICANT IS NOTIFIED OF COMPLETION OF THE GOVERNMENT'S AUDIT (INCLUDING RESOLUTION OF ANY EXCEPTIONS), WHICHEVER SHALL OCCUR FIRST;

(M) UNLESS EXPRESSLY AGREED TO BY THE COMMISSIONER, IT WILL NOT DISPOSE OF OR ENCUMBER ITS TITLE OR LEASEHOLD OR OTHER INTEREST IN THE SITE AND THE FACILITIES DURING THE PERIOD OF FEDERAL INTEREST OR FOR SO LONG AS THE GOVERNMENT HOLDS ANY BONDS PURSUANT TO A TITLE III LOAN, WHICHEVER IS LONGER;

(N) IT WILL FURNISH PROGRESS REPORTS AND SUCH OTHER INFORMATION RELATING TO THE PROPOSED CONSTRUCTION AND THE GRANT OR LOAN AS THE COMMISSIONER MAY REQUIRE;

(O) IT IS UNDERSTOOD AND AGREED THAT THE COMMISSIONER MAY, FROM TIME TO TIME, AFTER EXECUTION OF A LOAN OR GRANT AGREEMENT FOR THIS PROJECT, AND PRIOR TO FINAL SETTLEMENT UNDER THE GRANT OR LOAN AGREEMENT, MAKE COMPARD AMENDMENTS IN THE GRANT AND/OR LOAN AMOUNT TO ADJUST TO A REDUCTION IN THE COST OF THE FACILITIES, THE IDENTIFICATION OF INELIGIBLE COSTS, OR A REDUCTION IN THE SIZE OF THE PROJECT; AND,

(P) THAT IT HAS REVIEWED THE ASSUMED AND FINANCIAL REQUIREMENTS FOR OPERATION OF THE FACILITIES UPON THEIR COMPLETION, AND CONSIDERS THE PLAN FOR OPERATION OF THE FACILITIES TO BE PRACTICAL AND WITHIN THE FINANCIAL CAPABILITIES OF THE INSTITUTION.

4. THE UNDERSIGNED HEREBY CERTIFIES THAT THE APPLICANT POSSESSES LEGAL AUTHORITY TO APPLY FOR FEDERAL ASSISTANCE UNDER THE ACT, AND TO FINANCE AND CONSTRUCT THE PROPOSED FACILITIES; THAT A RESOLUTION, MOTION OR SIMILAR ACTION HAS BEEN DULY ADOPTED OR PASSED AS AN OFFICIAL ACT OF THE APPLICANT'S GOVERNING BOARD, AUTHORIZING THE FILING OF THIS APPLICATION, INCLUDING ALL UNDERSTANDINGS AND ASSURANCES CONTAINED HEREIN, AND DIRECTING AND AUTHORIZING THE UNDERSIGNED TO ACT AS THE OFFICIAL REPRESENTATIVE OF THE APPLICANT IN CONNECTION WITH THIS APPLICATION AND TO PROVIDE SUCH ADDITIONAL INFORMATION AS MAY BE REQUIRED; THAT IN FILING THE APPLICATION THE APPLICANT IS FULLY COGNIZANT OF THE CONDITIONS UNDER WHICH FEDERAL FUNDS ARE MADE AVAILABLE UNDER THE HIGHER EDUCATION FACILITIES ACT OF 1963, AS SET FORTH IN THIS APPLICATION FORM AND THE ACCOMPANYING INSTRUCTIONS AND REGULATIONS; AND THAT ALL INFORMATION AND STATEMENTS CONTAINED IN THIS APPLICATION AND THE ATTACHED SUPPORTING DOCUMENTS ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

(TITLE I ONLY)

5. THIS APPLICATION IS FILED FOR CONSIDERATION FOR A GRANT DURING THE FEDERAL FISCAL YEAR ENDING JUNE 30, _____ (YEAR). IT IS UNDERSTOOD THAT IF THE APPLICATION IS NOT RECOMMENDED BY THE STATE COMMISSION FOR A GRANT DURING THE FISCAL YEAR, A NEW APPLICATION WILL BE REQUIRED TO BE FILED IF THE APPLICANT WISHES THE PROJECT TO BE CONSIDERED FOR A GRANT DURING THE SUBSEQUENT FISCAL YEAR.

LEGAL NAME OF APPLICANT	ADDRESS OF APPLICANT (INCLUDE ZIP CODE)	
SIGNATURE OF AUTHORIZED OFFICER	ADDRESS OF AUTHORIZED OFFICER (IF DIFFERENT THAN ABOVE)	
TYPED NAME AND TITLE OF AUTHORIZED OFFICER	DATE OF APPLICATION	TELEPHONE NUMBER OF AUTHORIZED OFFICER AREA CODE / TELEPHONE NUMBER AND EXTENSION

Exhibit 4 to Stipulation

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION

BUREAU OF HIGHER EDUCATION
GRANT AGREEMENT
Higher Education Facilities Act

PROJECT NO.

Dear

Your application for a grant under the Higher Education Facilities Act of 1963, to assist in the construction of the academic facilities described below, is hereby approved.

The essential data concerning the approved grant are as follows:

LEGAL APPLICANT

INSTITUTION OR BRANCH CAMPUS

PROJECT

DATE OF APPLICATION	TITLE OF ACT	SPECIAL TERMS AND CONDITIONS	GRANT AMOUNT
	☐ TITLE I ☐ TITLE II	☐ NONAPPLICABLE ☐ APPLICABLE, DATED	$

This grant has been approved on the basis of the representations and assurances made in your application for a grant, dated as indicated above. The grant is subject to the Enclosed Terms and Conditions dated December 1967, and to such Special Terms and Conditions as may be indicated above, which are hereby made a part of this Agreement. Should the Commissioner find that any representation made in connection with the aforementioned application is incomplete or incorrect in any material respect or that for any reason there has been a failure to comply with any of the Terms and Conditions subject to which the grant is approved, or that the purposes for which the grant is made have not been or will not be achieved, notwithstanding any other provision of this Agreement, the Commissioner reserves the right to take such action as he deems necessary or appropriate to protect the interest of the government, including refusing to make any disbursement of funds and requiring the return of all or part of any funds that have already been disbursed.

This grant may be subject to termination if the facilities covered by the grant are not placed under construction, or under contract for construction, within eighteen months of the date of this letter.

Also enclosed are two copies of the approved project summary, one copy for your records and one for the architect. The project summary provides data concerning the facilities development cost, the eligible project development cost, and the facilities financing plan, as approved. The enclosed information sheet contains instructions regarding necessary clearances and other required actions in the development of the facilities.

Please indicate your receipt of this Agreement, and your understanding of the Terms and Conditions subject to which the grant is approved, by signing and returning the second copy of this letter.

Enclosures

Sincerely,

OE FORM 1054 (REV. 11-67)

APPLICANT COPY - 1

[Portions of Exhibit 12 to Stipulation.]

NUMBER AND AMOUNT OF GRANTS
BY TYPE OF INSTITUTION
FOR FISCAL YEAR 1969
UNFUNDED PROJECT APPLICATIONS

TYPE OF INSTITUTION	NO. OF UNFUNDED APPLICATIONS	AMOUNT OF GRANTS
Four-Year Public	68	$34,451,374
Two-Year Public	41	30,235,645
Private Independent	24	13,211,250
Roman Catholic	9	4,520,636
Private Other Denomination	34	10,889,539
TOTAL	176	$93,306,444

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

[Caption omitted in printing]

SUPPLEMENTAL STIPULATION AS TO DEFENDANTS ROBERT H. FINCH AND JAMES E. ALLEN, JR.

Plaintiffs and Defendants Robert H. Finch and James E. Allen, Jr., by their counsel, stipulate to the following facts. Counsel for the Plaintiffs and counsel for Defendants Robert H. Finch and James E. Allen, Jr. further agree that their stipulation to the facts set forth below is entered into without prejudice to their right to object to the relevancy or materiality of any fact so stipulated and in no way limits their right to present at trial, through testimony or documents, evidence to explain or provide a context for the facts so stipulated or evidence pertaining to other issues of fact which are relevant to the legal questions in this litigation.

18. Albertus Magnus College submitted an application which was transmitted by the Connecticut Commission to the Office of Education for a grant for construction of academic facilities to be located in a general academic building containing classrooms, faculty and administrative offices, faculty seminar room, student study area, language laboratories and adjoining offices and necessary related service and maintenance facilities. The grant was requested for construction of two language laboratories and adjoining offices and necessary related service facility in the general academic building. This application was approved by the Office of Education. A copy of said application, with omissions, is appended hereto as exhibit HEW-13.

13. Annhurst College submitted an application which was transmitted by the Connecticut Commission to the Office of Education for a grant for construction of a new music, drama and arts building with an auditorium to be used for general academic programs. This application was approved by the Office of Education. A copy of said application, with omissions, is appended hereto as exhibit HEW-14.

20. Fairfield University submitted an application which was transmitted by the Connecticut Commission to the Office of Education for a grant for construction of facilities in a new science building to house the biology, chemistry, mathematics and physics departments, the computer instructional and research division and some biology-related functions of the psychology department. The grant requested was for construction of the science building minus the computer facilities. This application was approved by the Office of Education. A copy of said application, with omissions, is appended hereto as exhibit HEW-15.

21. Fairfield University also submitted an application which was transmitted by the Connecticut Commission to the Office of Education for a grant for a new library building. This application was approved by the Office of Educa-

tion. A copy of said application, with omissions, is appended hereto as exhibit HEW-16.

22. Sacred Heart University submitted an application which was transmitted by the Connecticut Commission to the Office of Education for a grant for construction of a new library. This application was approved by the Office of Education. A copy of said application, with omissions, is appended hereto as exhibit HEW-17.

/s/ Peter L. Costas
Attorney for Plaintiffs
111 Pearl Street
Hartford, Connecticut 06103

/s/ William D. Ruckelshaus
Assistant Attorney General

/s/ Stewart H. Jones
United States Attorney

/s/ Harland F. Leathers

/s/ Jeffrey F. Axelrad

Attorneys, Department of Justice
Washington, D.C.
Attorneys for Defendants
Robert H. Finch and
James E. Allen, Jr.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Caption omitted in printing]

STIPULATION AS TO MARVIN K. PETERSON, CHAIRMAN OF THE CONNECTICUT COMMISSION ON AID TO HIGHER EDUCATION

Plaintiffs and Defendant Marvin K. Peterson, Chairman of the Connecticut Commission on Aid to Higher Education, by their counsel, stipulate the following facts:

1. In 1964, Governor John Dempsey created the Commission on Cooperation with Federal Authorities in Matters Pertaining to Higher Education pursuant to executive order.

This Commission was to implement the Statutory role in the allocation and distribution of funds under Title I of the Higher Education Facilities Act of 1963, PL 88-204. In 1966, Governor Dempsey designated the State Commission to act as the agency of the State of Connecticut in implementing the State's participation in programs under Titles I and VI A of the Higher Education Act of 1965, PL 89-329.

2. In 1967, the Legislature of the State of Connecticut enacted Public Act 585 which gave the Commission agency status and changed its name to the Connecticut Commission on Aid to Higher Education.

3. The members initially appointed to the Commission in 1964 were William J. Sanders, Secretary of the State Board of Education; George J. Conkling, State Commissioner of Finance and Control; Homer D. Babbidge, Jr., President of the University of Connecticut; Marvin K. Peterson, President of New Haven College; Rev. James E. Fitzgerald, President of Fairfield University; Vincent B. Coffin, Chancellor of the University of Hartford; Burton C. Hallowell, Vice President for Development and Professor of Economics at Wesleyan University; David B. H. Martin, special Assistant on Government Relations to the President and to the Provost of Yale University; and William H. Curtis, Superintendent of Schools in Manchester. The present members of the Commission are as follows: Marvin K. Peterson, President of New Haven College, Chairman of the Commission; Frederick W. Lowe, Jr., President of Manchester Community College, Vice-chairman of the Commission; George J. Conkling, State Commissioner of Finance and Control, Secretary of the Commission; Homer D. Babbidge, Jr., President of the University of Connecticut; William H. Conley, President of Sacred Heart University; ruth A. Haas, President of Western Connecticut State College; Warren G. Hill, Director of the Commission for Higher Education; David B. H. Martin, a citizen member; Howard B. Matthews, Vice President and Treasurer of Wesleyan University; William J. Sanders, Secretary of the State Board of

education; Mrs. Ruth V. Vogt, a housewife from New London; and Archibald M. Woodruff, Chancellor of the University of Hartford.

4. The Commission in 1964 adopted a State Plan under Title I of the Higher Education Facilities Act pursuant to the requirement of the U.S. Department of Health, Education and Welfare. Such state plan was approved by the U.S. Commissioner of Education in 1964 and the Commission then began to consider applications for grants under Title I of the Higher Education Facilities Act of 1963.

5. In accordance with the procedures of the Commission, applications for grant are received from institutions of higher learning throughout the State of Connecticut on forms provided by the U.S. Commissioner of Education. The Commission employs a staff which reviews these applications to determine that they are in compliance with the requirements of the U.S. Commissioner of Education and with the requirements of the State Plan adopted with respect to Federal Higher Education Facilities Act of 1963. Copies of the complete application and of correspondence relating thereto are maintained in the offices of the State Commission. Upon determination that an application from an institution meets the criteria for eligiblity, various factors set forth in the State Plan are then considered with respect to the institution and the proposed subject matter of the grant. These factors provide a basis for evaluating the need for the facilities in question and the benefits to be afforded thereby to the institution and potential students in order to attain the overall facilities goal of the State of Connecticut as enunciated in the State Plan adopted by the Commission.

The criteria for the scoring of the several institutions are broken into two categories (a) Required Criteria and (b) Optional Criteria. Required criteria include (1) future enrollment increase numerical and percentage), (2) facilities increase (numerical and percentage), and (3) utilization of

facilities (capacity/enrollment ratio, average weekly use of classrooms, average weekly use of lab). A sheet showing the weighting given the several factors is appended hereto as Exhibit 1.

In the event of ties in the scores of two or more institutions, the first tie breaker is the combined score of percentage and numerical future enrollment increase. The second tie breaker is the numerical increase in undergraduate enrollment to be expected by the third fall term after the fall term which preceded the closing date for the application. The third tie breaker is the net increase in assignable area of instructional and library facilities to be provided by the project.

In accordance with the provisions of Title I of the Higher Education Facilities Act of 1963, the maximum amount payable for any one project under Section 104 of the Act had been 1/3 of the amount of the eligible development costs; this Title was amended by Congress effective in fiscal 1969 so that the maximum amount payable was 1/2 the eligible development costs. In addition to the aforementioned percentage ceiling established by the federal Statutes, the State Commission adopted an initial maximum of $500,000 payable for any one project, with a provision that, if funds remained available under the State's allocation after recommendations had been made for grants to all eligible projects, then an institution might be granted a sum in excess of $500,000, up to the maximum authorized by the federal Statutes. In 1966, the State Plan was revised to provide an initial maximum dollar amount per grant of $350,000.

With respect to public community colleges and public technical colleges, the percentage figures are respectively 40 percent and 50 percent of the eligible development cost. Although no dollar limit was initially established for projects at such colleges, the State Commission in 1965 adopted a dollar limit of $500,000 and this dollar amount was later reduced for the fiscal year 1969 to $350,000.

In the event that a college does not receive a grant during one closing period for an otherwise eligible project, the application for a grant as to that project is carried forward to the next closing period if it is within the fiscal year, or returned to the applicant if the next closing period is in another fiscal year. If the institution receives only a partial grant, it may submit supplementary application for the eligible balance in any closing periods held before the project is substantially completed. If an institution has had an application returned, it must submit a new application in order to be considered again.

6. Pursuant to this plan of operation, the staff of the Commission has scored the applications received from the various institutions of higher learning in each closing period and has presented tally sheets to the Commission indicating the names of the institutions, their total score, and the amount of the grants to be recommended which might be only partial amounts or nothing, depending upon the grants made to higher scoring institutions and the state allocation. Copies of the tally sheets for the several closing periods are appended hereto as Exhibits 2-8. All grant applications received from institutions of higher learnings within the State of Connecticut which were completed and which were found to be eligible for consideration pursuant to the Higher Education Facilities Act of 1963 are set forth in the appended tally sheets.

7. The Commission has recommended grants to the U.S. Commissioner of Education in accordance with the amounts indicated on the tally sheets, Exhibits 2-8.

8. In the period closing January 15, 1965 (Exhibit 2), Albertus Magnus College was eligible for a grant of $24,632; Wesleyan University and Trinity were each eligible for a grant in the amount of $500,000 but none of these three institutions was recommended for a grant. The University of Connecticut was eligible for a grant in the amount of $500,000 but was recommended for a partial grant of $340,521 which represented the amount remaining in the

State's allocation from the United States Office of Education after recommendation of maximum grants to the higher scoring institutions. With respect to the application from the University of Connecticut, the Commission subsequently recommended a supplementary grant of $159,479 in the ensuing year to provide the maximum eligible amount of $500,000. With respect to the application from Albertus Magnus College, a grant of $24,632 was recommended by the Commission in the fiscal year 1966. The application submitted in fiscal year 1965 by Wesleyan University was again considered in fiscal year 1966 and again not recommended for grant because of a low score relative to other institutions. A new application from Trinity College for the same project was submitted in fiscal year 1966 and again was not favorably considered because of a low score. A new application for the same project at Trinity College was submitted in fiscal year 1967 and recommended for a grant in the amount of $500,000.

9. In the period closing January 14, 1966 (Exhibit 3), the Music and Art Building Project at Connecticut College was recommended for only a partial grant because of its low score which put it in a position where recommendations to higher scoring institutions used the bulk of available allocation. Connecticut College subsequently received an increase in the partial grant because of reallocation of funds to Connecticut so that the total amount received for the fiscal year 1966 was $312,125. Connecticut College submitted an application for a supplemental grant for fiscal year 1967 and was recommended for an additional grant of $187,875 to provide the maximum of $500,000. The library project of Connecticut College and the projects of Trinity College and Wesleyan University were not recommended for grants because of the low scores of the projects. As stated in Paragraph 8 above, Trinity College filed a new application and did receive a grant for the period closing November 15, 1966. The Connecticut College library project did not subsequently receive a federal grant, nor did

the Wesleyan University project as indicated hereinbefore in Paragraph 8.

10. For the period closing November 15, 1966 (Exhibit 4), grants were made to all eligible institutions up to the maximum amounts eligible under the State Plan.

11. For the period closing February 1, 1967 (Exhibit 5), Wesleyan University, which was eligible for a grant of $500,000, was recommended for a partial grant of only $123,092 because of the exhaustion of the State's allocation by recommendations for grants to higher scoring institutions. Trinity College was recommended for a grant of $500,000. Subsequently, the United States Office of Education determined that the projects of Trinity College and Wesleyan University were not eligible because of lack of urgent need for the type of facilities contemplated and these applications were then denied. After the determination of ineligiblity, the amount of $623,093 was then reallocated by the State Commission to the projects at Southern Connecticut State College, University of Connecticut, Trinity College and Wesleyan University referred to in the tally sheet for the period closing November 15, 1966 and the projects of the University of Bridgeport and University of Hartford referred to in the tally sheet for the period closing February 1, 1967.

12. For the period closing November 15, 1967 (Exhibit 6), Fairfield University received only a partial grant of $242,665 although it was eligible in the amount of $500,000, because of exhaustion of the state allocation in recommendations for grants to higher scoring institutions. The projects of the University of Connecticut and the University of Hartford received no funds because of exhaustion of the State's allocation. The project of the University of Connecticut was considered subsequentiy with the applications for the period closing November 15, 1968 and subsequently received a recommendation for a grant in the amount of $350,000. The application for the project of the University of Hartford was not resubmitted.

13. For the period closing November 15, 1968 (Exhibit 7), grants were made to all eligible institutions up to the maximum amounts eligible under the State Plan.

14. For the period closing February 1, 1969 (Exhibit 8), Wesleyan University was recommended for a partial grant in the amount of $264,022 because of the exhaustion of allocated funds for the fiscal year.

15. According to the information at hand, the United States Commissioner of Education has accepted the recommendations of the State Commission and made grants in all instances except for the projects of Wesleyan University and Trinity College recommended for the period closing February 1, 1967.

16. The Commission and members thereof have had occasion to consider questions raised concerning the Constitutionality of grants to church related institutions on at least several occasions. Portions of the minutes of meetings of the Commission reflecting such consideration are appended hereto as Exhibits 9-13.

17. The Commission has not adopted any supplemental guidelines or requirements directed to applying institutions with respect to hiring policies or with respect to enrollment policies so as to ensure that no discriminatory practices are employed. Counsel for the Commission wishes to note that he is of the opinion that the Commission has no authority to adopt further guidelines and points out that the application supplied by the U.S. Commissioner of Education requires the college to indicate that it complies with Title VI of the Civil Rights Act of 1964.

18. The Commission has not adopted any guidelines or procedures for inspection of facilities subsequent to the construction thereof. Counsel for the Commission wishes to note that he is of the opinion that the Commission does not have any authority to provide for or require such subsequent inspection.

19. The Commission regularly receives from the Connecticut Commission for Higher Education the enrollment figures of the institutions of higher learning throughout the State of Connecticut, which figures are based upon information supplied by the institutions to the Commission for Higher Education. The enrollments in the colleges for the years 1965-1969 as reported by the Commission for Higher Education and the Connecticut State Board of Education are set forth in Exhibits 14-18 appended hereto.

20. A copy of Public Act 585 of 1967 of the State of Connecticut creating the Connecticut Commission on Aid to Higher Education is appended hereto as Exhibit 19.

21. On April 20, 1967, the Connecticut Civil Liberties Union wrote to Defendant concerning the alleged unconstitutionality in the activities of the Connecticut Commission in recommending grants to church related institutions of higher education. A reply thereto was made by Defendants on April 27, 1967. Copies of these letters are appended hereto as Exhibits 20 and 21.

22. The University of Connecticut is an institution of higher learning established by the State of Connecticut and funded primarily by the State of Connecticut, which institution is not organized for nor engaged in the propagation of promotion of the doctrines, teachings and practices of any religion and is open to enrollment of and attracts students of all races and of all or no religious persuasion, and which institution does not require any sectarian training or religious obligations of its students.

23. The University of Hartford is a private institution of higher learning chartered by the State of Connecticut and is not organized for nor engaged in the propagation or promotion of the doctrines, teachings and practices of any religion and is open to enrollment and attracts sutdents of all races and of any or no religious persuasion, and which does not require any sectarian training or religious obligations or its students.

24. Each of the Plaintiffs is a citizen of the United States and of the State of Connecticut, and each pays income and other taxes to the United States.

MARVIN K. PETERSON
CHAIRMAN OF THE COMMISSION
ON AID TO HIGHER EDUCATION
OF THE STATE OF CONNECTICUT

By: Robert K. Killian
Attorney General

/s/ F. Michael Ahern
Assistant Attorney General
30 Trinity Street
Hartford, Connecticut 06115

Hartford, Connecticut
July 25, 1969

/s/ Peter L. Costas
Attorney for Plaintiffs
111 Pearl Street
Hartford, Connecticut 06103

Hartford, Connecticut
July 25, 1969

EXCERPTS FROM TESTIMONY GIVEN AT HEARING BEFORE THREE-JUDGE COURT

* * *

[330] WILLIAM H. CONLEY

called as a witness, being first duly sworn, was examined and testified as follows:

THE CLERK: Will you state your name, please?

THE WITNESS: William H. Conley.

THE CLERK: And where are you from, sir?

THE WITNESS: Fairfield, Connecticut.

DIRECT EXAMINATION

BY MR. SMITH:

Q. Dr. Conley, what is your position? A. President, Sacred Heart.

* * *

[342] CROSS EXAMINATION

BY MR. WILLIAMS:

Q. Dr. Conley, have you been President of Sacred Heart University since its beginning? A. Right.

Q. You went there in 1963? A. Right.

* * *

Q. Now, did there come a time at Fairfield University when you made application for a grant under the Higher Education Facilities Act—Sacred Heart University, for a library? [348] A. What is that?

Q. Did there come a time when you made application for a grant? A. Yes, sir.

Q. When was that, sir? A. I really don't know the date. I'd have to look through the record on what the date is.

Q. Is there a library there now which was erected— A. That is correct.

Q. —as the result of such a grant? A. That is right.

Q. Do you know how much that library cost? A. I believe it was approximately a million and a quarter dollars.

Q. How large was the grant that was made to Sacred Heart? A. For about $380,000, in that bracket; that's a round number.

Q. Has the library been completely erected? A. Yes. It was opned to the students a year ago in October. It has been in full operation since a year ago October.

Q. Now, are any classes conducted in that library? A. There have been none to date. There will be in the next semester because there is a large lecture hall in the library [349] and courses in English, Literature and History are scheduled to be conducted, that is, European History are scheduled to be conducted in the next semester and possibly lecture courses in Fine Arts.

Q. At any time has any form of religious worship been conducted in the library? A. No, sir.

Q. And is there contemplated such? A. No, sir.

Q. Are there religious symbols in the library? A. Not to my knowledge.

Q. Who is your librarian? A. Richard Matzek.

Q. And is he in charge of book acquisition? A. He is.

* * *

[460] WILLIAM C. McINNES

called as a witness, having previously been duly sworn, was further examined, and testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Father McInnes, would you state your full name? A. My name is William Charles McInnes.

Q. And where is your place of residence? A. Fairfield, Connecticut.

Q. What is your occupation there? A. I am the President of Fairfield University.

Q. How long have you been so engaged? A. I've been president since June, 1964.

* * *

[463] Q. Directing your attention to Mr. Costas' last observation, was there a time when an application was made by Fairfield University to the Health, Education and Welfare Department for a [464] grant for a Science building to be erected on campus? A. Yes, there was.

Q. Has that Science building been erected, as yet? A. No. The Science building will not be completed until February, 1971.

Q. When was project approval given to that Science building? A. Well, I think it's a long complicated process of getting an approval, as I understand it; that the final project approval for that Science building was given on May 23, 1969.

Q. Do you know, Father McInnes, whether any funds have been disbursed yet for that project? A. No. Under the terms of the agreement with the Government I understand that we were not allowed to apply for any funds and so we did not apply for funds until approximately two months after having received this project approval, which would be this last summer; and I understand that about a month ago we received the first funds from the Government.

Q. And can you tell us what the amount of the grant was with respect to the Science building? A. I understand it was $245,000.

Q. Would you tell the Court, please, the projected cost of the Science building? [465] A. The total cost of the building is estimated now to be $4,500,000.

Q. Is the building actually now under construction on the campus? A. It is.

* * *

[470] Q. Now, did there come a time, while you were president of the university, when an application was made for a grant for the erection of a library on campus? A. Yes, there was.

Q. Can you tell us approximately when that was made? A. I believe that was in 1966.

Q. And was that, in fact, approved? A. Well, again the same process. We submitted to the Commission on Higher Education in Connecticut, which is the State recommending agency, our request to build an academic facility, a library, which is one of the essential components of a university. They measured this request in relationship and in competition with all other academic institutions in the State making the same application. They use an objective set of criteria to decide how these things are to be given. It's based on such academic things as how many more students will you accommodate, what will you use the space for in relationship [471] to making this a better university academically; several things like this. These are all point-scored on standards that they have set up. We were in competition tion with all the other schools at the same time submitting the application.

When this was done, then we had to draw up plans and, as I understand it, it's something like applying for a bank loan; they agree to the kind of thing if all of the conditions are made. You draw up the plans, you show what you are going to do and if this is approved then they give you what they call a project approval to start the thing and then you can start, after that, you can start requesting funds for the building.

Q. Was all this done in connection with the library? A. Yes, it was.

Q. Has the library been completed? A. The library was completed and opened in September, 1968.

Q. How much did the library cost Fairfield University? A. The library cost two million dollars.

Q. What was the amount of the grant? A. The grant was $500,000.

Q. Have all of the funds in the grant been disbursed to Fairfield at this moment? A. I believe that just recently the final payment was [472] received from the Government for the erection of the library.

Q. Now, that library has been in operation, has it, Father, since 1968? A. Yes.

Q. Are any classes taught in the library? A. No. The library is completely a resource center.

Q. Are any religious ceremonies conducted in the library? A. There are no religious ceremonies ever held in the library.

Q. Has there been any deviation from the purpose expressed in your application for a grant with the HEW vis-a-vis this library? A. To my knowledge, there has not. In fact, it's been very much positive confirmation of the purposes. It's given to us, a resource capable of holding 300,000 volumes of books to serve the university.

Q. Is the library made available to the people to Fairfield, Connecticut and surrounding areas? A. Yes. One of the standards that we have of operation in the university is that it serves as an intellectual resource in the community and the library is open to all of the residents of Fairfield. In fact, no encourage them to use it.

Q. Is there any inhibition with respect to the type of [473] books that can be found in the library at Fairfield? A. No. The acquisitions are determined by the requests of each department, according to their needs, and also supervised by the Director of Acquisitions, who has complete control of what she buys for the school.

Q. Who is the Director of Acquisitions? A. The Director of Acquisitions is Mrs. Barbara Bryan.

Q. Is she still on the faculty at Fairfield? A. Yes, she is.

* * *

Q. Now, do you have plans with respect to the Science building, which you described for us earlier in your testimony, [474] as to what precisely it will house in the way of departments? A. Yes, we do, and these were discussed extensively with the Government representatives about the use of the building. It is to be used solely and exclusively for classrooms in the Sciences of Physics, Chemistry, Biology, it's to house the computer center and some of the sections of the psychology department.

Q. Are any other kinds of courses to be taught there? A. No. It's our intention right now to use this building, since it is adapted for this, for Science courses.

Q. Will any form of worship take place in that building? A. No, it will not.

Q. Will there be any religious symbolism in that building? A. No, there will not.

Q. Is there any religious symbolism in your library? A. No, there is not.

* * *

[540] BARBARA BRYAN

called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Barbara D. Bryan.

THE CLERK: Where are you from?

THE WITNESS: Fairfield, Connecticut.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Would you state your full name, please, Mrs. Bryan? A. Barbara D. Bryan.

Q. B-r-y-a-n? A. That's correct.

Q. Where do you live, please? A. Fairfield, Connecticut.

Q. How long have you lived there? A. About nineteen years.

Q. Mrs. Bryan, do you presently hold a position at Fairfield University? A. Yes, I do.

Q. What is that position? A. I'm Assistant Director of the Library and in charge of acquisitions.

Q. In charge of book acquisitions? A. That's correct.

[541] Q. How long have you been so occupied? A. Since November, 1965; since I started work at the university.

Q. At the time that you were employed by Fairfield University, was that in an old library not now? A. Yes. It was in the old library in Canisius Hall.

Q. And since that time a new library has been erected at Fairfield? A. Yes.

Q. And you are now employed in it? A. Right.

* * *

Q. At the time that you were engaged was any inquiry made with respect to your religious affiliation? [542] A. No, it was not.

Q. Were you then Catholic? A. No.

Q. Are you now? A. No.

Q. Mrs. Bryan, when was it that the new library became operational? A. September, 1968.

Q. And since that time you have been in charge of book acquisitions? A. Yes.

Q. How many volumes does the Fairfield University Library have? A. We have approximately 100,000 bound volumes and we have a considerable microprint collection.

Q. And how many volumes do you have room for in the new library? A. 310,000 bound volumes.

Q. Now, what is the book acquisition policy at Fairfield that you employ? A. Well, of the book budget approximately two-thirds is allocated to the various academic departments for their use. One-third of it is reserved to the library for the purchase of [543] general reference materials, materials that may cross disciplines and other things like that; indexes.

Q. You say that one-third of it is used for what? A. One-third of it is what we call the General Book Fund and

those are materials which the library, it itself, selects and purchases. It includes reference materials, business services, it would include the encyclopedia, it would be recreational reading; this type of thing.

Q. Is there any policy or practice at Fairfield that inhibits you from acquiring any books that you choose as the Book Acquisition Director? A. Only finances.

Q. Only finances. Are any classrooms conducted in the new library building? A. No.

Q. Have there been any classes conducted in the new library building? A. No.

Q. Is there a facility for classes in that building? A. No. We don't have any classrooms in the building. We do have something called group studies, which are available to students who may want to study themselves to work in a project. There are no classes conducted. This is for group study of students [544] who are working on, say, a marketing project for the need to get together in a place where they can talk and have access to library materials. They use a group study. That's the purpose of those particular rooms.

Q. Is any form of religious worship conducted in that building, to your knowledge? A. No.

Q. Has there ever been? A. Not to my knowledge.

Q. Are there any religious symbols or plaques on that building? A. No, there are none.

Q. Have there ever been, to your knowledge? A. No.

* * *

[547] THOMAS A. McGRATH

called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Thomas Augustin McGrath.

THE CLERK: And where are you from, sir?

THE WITNESS: Fairfield, Connecticut.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. How long have you been at Fairfield University, Father? A. Since the summer of 1957. This is my thirteenth year.

* * *

[548] Q. Are you now Chairman of the Psychology Department at Fairfield University? A. Yes, sir.

Q. How many people are in that department? A. We have seven full time professors and one part time professor.

Q. And what is the religious constituency of that department? A. Let me see. Dr. Tolor, Dr. Breginsky, Dr. Levine and Dr. Heiman are Jewish. Dr. Boitano and Dr. Salafia—well, I'm not sure they're tied in with any specific religion. I think in some root form they were once Catholics. Dr. John McCarthy is a Catholic—a bit disaffected, but a Catholic, and I would say the one sort of convinced one is myself. Lawrence Levine is the part time man in Social Psychology. He's from Quinnipiac College, a Doctoral student at U Conn, University of Connecticut.

Q. Where is the Psychology Department presently housed? A. Mainly in Canisius Hall. We have most of our classrooms there and our offices and one lab. We have another animal [549] lab over in the old kitchen of Loyola Hall.

Q. Now, is there a new Science building presently under construction on the campus? A. Yes, sir.

Q. Will it house a portion of the Psychology Department? A. Yes. It will take the whole section of animals and laboratories devoted to animal research and experimentation. Usually we call this physiological psychology, and that whole section will move over.

Q. And what departments of Science, other than your own, will be housed in that new facility? A. Well, I know Physics, Chemistry and Biology. I'm just not sure of Math. I know the other three natural Sciences are there, and I think Math; but I'm not positive.

Q. Will it house both physical Sciences and live Sciences? A. Yes.

Q. Will it house only your laboratory? A. Laboratories and about three offices and small research labs for the professors who are involved in it and their research assistants.

Q. Will any other subjects than the ones that you have outlined be taught in this new facility? A. No sir, not that I know of.

[550] Q. Will any form of religious worship be conducted in that facility? A. No sir, not that I know of.

Q. Do the plans of the building call for any religious symbolism or plaques on that building? A. No sir, not that I know of.

Q. Is there any effort made by you, as head of your department, to superimpose your views on the members of your department with respect to what they may or may not teach in the field of psychology? A. Absolutely not. They come with credentials and they teach it as they wish.

Q. Are there areas in this discipline in which there is potential for conduct between the course matter and so-called Catholic doctrine? A. Yes, I could see where it could arise and I think, in any open discussion, does arise. Once you get into attitudes and beliefs, which is a section of social psychology, taught by Mr. Lavine, I can see where there would be ample areas of cross-over and discussion.

Q. Is there any effort made by your department, or by anyone superior to you, to influence the conduct of that form of discussion? [551] A. No, sir.

Q. Is there any inhibition placed upon any members of your department with respect to what they may or may not teach? A. No, sir.

* * *

[563] DONALD J. ROSS

called as a witness, being first duly sworn, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Donald J. Ross.

THE CLERK: And where are you from, sir?
THE WITNESS: Fairfield, Connecticut.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Dr. Ross, would you state your name and address and present occupation, for the record? A. I'm Donald J. Ross of Fairfield, Connecticut and I am a Professor of Biology and Chairman of the Biology Department.

Q. How long have you been so engaged? A. I was Chairman of the Biology Department since 1960, but I was a member of the Biology Teaching Faculty since 1950.

Q. Dr. Ross, where is your department housed at the present time? A. Presently it's housed in Xavier Hall.

Q. And is it to be moved into the new Scinece building? A. Yes, it is.

Q. Did you participate at all in the planning of the new Science building? A. Yes, I did.

Q. Can you tell us what other departments will be housed [564] in that building? A. Yes. The Chemistry Department, the Physics Department, the Mathematics Department and part of the—at least the experimental arm of the Psychology Department.

Q. During the time that you have been teaching Biology at Fairfield have you had complete academic freedom with respect to the content matter of your course? A. Yes.

Q. Has there been, at any time during your time at Fairfield, any effort to superimpose anyone else's views on yours as to what the content of the course should be? A. No.

Q. Has there been any effort to prevent or inhibit you or other members of your department from teaching anything contrary to Catholic position? A. No.

Q. Has this subject ever come up as a problem in your department? A. Any sensitive subject, you mean?

Q. No— A. Sensitive to interpretation by Catholics?

Q. Well, I'll ask you that question: Have you had problems that are sensitive, in nature, that arise in your Biology [565] Department insofar as Catholic doctrine is concerned? A. No.

Q. Do you feel perfectly free to discuss any subjects with your students? A. I do.

Q. And in any way that you choose within your competence? A. Yes, I do.

Q. Is that true of the other members of your department? A. That is true.

MR. ORTH: Objection, your Honor. I don't think the witness would necessarily know how the other members of his department teach.

BY MR. WILLIAMS:

Q. Have you attempted to restrict the other members of your department, in any way, in this regard? A. No.

Q. At any point? A. No.

Q. Now, do you hire the other members of the Biology Department or do you engage them when you're looking for new teachers? A. Yes.

Q. And do you have to have any form of approval from any superior at Fairfield in order to engage a man for your department [566] other than to clear the economics of it? A. No.

Q. Do you have both Catholics and non-Catholics working in your department? A. Yes, I do.

Q. Is there any policy of restriction or discrimination with respect to hiring members of the faculty at Fairfiled University? A. No.

* * *

[583] RICHARD A. MATZEK

called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you state your name?

THE WITNESS: Richard A. Matzek.

THE CLERK: Where are you from?

THE WITNESS: Bridgeport, Connecticut.

DIRECT EXAMINATION

BY MR. WILLIAMS:

MR. WILLIAMS: So that the Court will have a point of reference, we have completed the live testimony with re-

spect to Fairfield University and we will now put in the evidence with respect to Sacred Heart University.

Dr. Conley has already testified. I don't propose to recall him.

Rabbi Wallin has testified for Sacred Heart today.

BY MR. WILLIAMS:

Q. Would you please state your full name? A. Richard A. Matzek.

* * *

[584] Q. Who was it who engaged you at Sacred Heart University? A. I was actually interviewed by a man I was working for at the time in Marquette University, the Head Librarian there, who came to Sacred Heart to become the first Head Librarian at Sacred Heart. He was the only person who interviewed me.

Q. How long have you been Head Librarian at Sacred Heart? A. Since mid summer, 1966.

Q. And prior to that you were the Assistant Librarian? [585] A. That's correct.

Q. How long did you hold that position? A. From June, 1963 until 1966.

Q. In other words, is it the fact, Mr. Matzek, that you went to the university at its very opening? A. Pardon?

Q. You began work at the university at the time it opened? A. That's right. Prior to its opening.

Q. Prior to its opening? A. That's right.

Q. And you've been there since. Did there come a time when your library shifted place and into a new building? A. Yes. We moved in the first few weeks of November, 1968.

Q. And that was in the new library building, which is the subject matter of this litigation? A. That's correct.

Q. How many volumes do you have in that library? A. At present, we have slightly more than 60,000 volumes.

Q. How large was Sacred Heart University when you were there during the first year? A. We began with no students and no books in the library, [586] and we added 10,000 volumes. We've done that pretty well on that basis since the, 10,000 volumes per year.

Q. How many students have you had per year? A. It has increased from 175, approximately, in the first year to, I believe, 1750 at this time.

Q. Your first graduating class was in 1967? A. That's correct.

Q. Now, can you tell us what the practice and policy of the Sacred Heart University Library is with respect to book acquisition? A. I have a staff member, a professional librarian, assigned to acquisitions. The overall policy is a general library–academic library policy in which the faculty recommends a certain percentage of the books to the library staff and then we simply pursue that and purchase them. At this time we're averaging somewhere about 60 per cent to 65 per cent of our books are purchased from faculty requests. The other ones are on standing orders, continuations, periodicals; and that comprises the rest of the book budget.

Q. Now, in addition to your acquisition by purchase, do you receive books as gifts? A. Yes. A certain number of books we receive as gifts. We have not incorporated too many of them. Generally they're not [587] either of a college level or as up to date, for instance, in the fields of the Sciences as we would like. Generally these are not put in. We call upon the faculty, upon occasion, to examine them, to see if they're worthwhile putting in. Many of our gifts have been from our own faculty members, so those generally do go into the collection.

Q. Is there any restriction on your policy of book acquisition? A. No, there has been no restriction.

Q. Other than economics? A. Right. The only reason we've ever had to turn down a faculty member, and it's happened very seldom, was because of lack of funds.

Q. Are there any books which you have been told you cannot have in the Sacred Heart University Library– A. No, sir.

Q. –because of content? A. No, sir.

Q. Now, since the new library has been opened have any classes been conducted in it? A. No, there are no

classrooms in the library building at all. There's one lecture hall.

Q. There is a lecture hall there? [588] A. Yes.

Q. Has it ever been used for the conduct of classes or for lectures? A. It's used for lectures, but not for regularly occurring classes. It's been used for concerts and for some theater work.

Q. Have any religious services been conducted in the library building? A. No, they have not.

Q. Is there any religious symbolism or are there any religious plaques on the library? A. No.

Q. I hand you Exhibit 101, Mr. Matzek, and direct your attention to Page 18 of 101, where there is depicted a drawing of the library building. I direct your attention to the fact that there is a religious statute on the corner of that building. Does that exist there? A. No, sir, it does not.

Q. Did it ever exist? A. No. This is the original architect's conception of the building in the second stage of its design and this is the only exterior architect's sketch that we've had; and that's as far as that statuary garden was on this sketch and it was not [589] approved.

Q. Has there ver been any form of religious symbolism in the building? A. No, sir.

JUDGE BLUMFELD: Well, is there a niche there for a statute in the future?

THE WITNESS: We have a plaque up there now, which is a hand and a book. It's not a religious symbol. It represents—the book is the content of the library and the hand is the guiding hand of the faculty. It's in that exact spot on the building.

BY MR. WILLIAMS:

Q. Are the members of the community permitted to use the library, Mr. Matzek? A. Yes, they are.

Q. And do they use the library? A. Yes, the use has been quite considerable. We allow students from other colleges, from the neighborhing high schools and adults to obtain courtesy cards to use the library.

* * *

[623] SISTER MARY LOUISE

called as a witness, having been previousl.y duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Would you state your full name, please? A. Sister Marie Louise Hubert.

Q. And where do you live at the present time? A. New Haven, Connecticut.

Q. What is your present occupation? A. I am President of Albertus Magnus College.

Q. How long have you been President of Albertus Magnus College, Sister? A. I have been President of Albertus since 1956.

* * *

[627] Q. Did there come a time, Sister Marie Louise, when you applied for a grant from the Health, Education and Welfare Department for the construction of a Foreign Language Laboratory? A. Yes.

Q. And was such a grant made? A. Yes, the grant was made.

Q. When did you receive the funds? A. We received a partial payment of the funds in January of 1969.

Q. What was the total amount of the grant that was made? A. The total amount of the grant was originally 24 thousand and some odd dollars and just recently, within the past few weeks, because the cost of construction was less than had been anticipated, it was reduced a few thousand dollars. I don't remember [628] the exact amount, but it's in the neighborhood of $21,000, or so, now.

Q. The cost was less than had been anticipated? A. Yes.

Q. And so the grant was cut? A. Yes.

Q. And you received almost all of the balance, is that correct? A. Yes. The grant as I mentioned before, the first payment was made in January of 1969 and all the rest of the grant, except for $100, was received about two weeks ago.

Q. Now, has that Foreign Language Laboratory been constructed? A. Yes, it has.

Q. And does it sit in one of your academic buildings? A. Yes, it does.

Q. Which one? A. Aquinas Hall, the academic building.

Q. How much of that hall does this laboratory take? A. Two rooms and a connecting room for tapes.

Q. What is the purpose of the Foreign Language Laboratory? A. Pardon me. May I make a correction?

Q. Yes. [629] A. The two language labs and the connecting room in between, plus two offices for the foreign language people who are connected with the lab. That's the unit.

Q. Approximately, can you tell us how much square footage the laboratory takes? A. No, I don't know offhand, without checking.

Q. What is the purpose of the laboratory? A. Well, the purpose of the laboratory is to enable the students in foreign languages to listen to tapes and to produce their own—to hear their own recordings and to improve their pronunciation.

Q. Now, is the use of the laboratory mandatory on the part of those students who are taking language courses at Albertus Magnus? A. Not, it is not mandatory, but there are hours assigned when they may go in to use the laboratory and they are encouraged to do so, especially in the elementary and intermediate courses.

Q. And what languages are taught at Albertus? A. The languages are French, German, Italian, Spanish and Classics are taught; Latin and Greek, but they do not use the language laboratory.

Q. The language laboratory relates only to contemporary life language courses, is that correct? [630] A. Well, yes, that is correct. The Classics people could, but I don't believe they do because it isn't a question of speaking the language, obviously.

Q. Well, are there tapes provided for the courses in the Classics? A. Yes, there are tapes.

* * *

[634] Q. Now, when did the Foreign Language Laboratory in the Aquinas Building become operational? A. I believe it became operational in 1966.

Q. It became operational in '66, but you didn't receive the funds until a few weeks ago from the Federal Government, is that right? A. Yes.

Q. Did you have to submit documents in order to get the disbursement of the final funds a few weeks ago? A. Yes, we did.

Q. At any time since this laboratory has been operational has it been used for any purposes other than as a Foreign Language [635] Laboratory where students in modern language could get help in their pronunciation, understanding of the language? A. No, it has not.

Q. Has it been used directly or indirectly for any religious purposes? A. No, sir.

Q. At any time have any religious services been conducted in this portion of the building? A. No, sir.

Q. Does this portion of the building have any religious symbolism? A. No, it does not.

Q. Are there any plaques or other religious symbols in the Foreign Lanugage Laboratory? A. No, there are not.

Q. Has the language laboratory been used in all respects precisely as it was represented to be used to the Department of Health, Education and Welfare when the loan application was approved? A. Yes.

* * *

[715] SISTER CECILE COMTOIS

called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Would you state your name, please?

THE WITNESS: Sister Cecile Comtois.

THE CLERK: And where are you from?

THE WITNESS: Woodstock, Connecticut.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Did you spell that for the reporter, Sister? A. C-o-m-t-o-i-s.

Q. Sister, you say that you live in Woodstock, Connecticut, is that correct? A. South Woodstock, to be more accurate.

Q. How long have you resided there? A. I arrived there in December, 1965.

* * *

[716] Q. What is your present occupation, Sister? A. I am President of Annhurst College.

Q. How long have you been president of Annhurst? A. Since December, 1965.

* * *

[720] Q. Did you apply to the Department of Health, Education and Welfare for a grant for the erection of a Cultural Building [721] on the Annhurst campus? A. I did.

Q. Approximately when was that? A. The agreement was made in May, 1967, to award us such a grant

* * *

Q. When did you receive the first disbursement of funds from the Federal Government for this building? A. I'm not positive, but I think it's January of 1969.

Q. I am going to hand you two documents which the clerk has marked Defendants' A-5 and A-6 and ask you when you finally received approval for the project about which we are speaking; namely, the erection of a cultural building for art, music and drama on the Annhurst campus? A. The very final approval was received on March 25th, 1969.

* * *

[724] Q. Is it the fact, Sister, that construction has begun on that building? A. Construction has begun, yes.

Q. And what department at Annhurst will be housed in that building? [725] A. We will have Music, Art and Drama in that building.

Q. It will be a cultural center? A. Cultural center.

Q. Will it also house an auditorium? A. It will house a 1,000 seat auditorium.

Q. How close to completion is that building at the present time? A. I would like to say that it's very near completion. I would hope it would be in January, but I doubt it.

Q. Now, will any classes be conducted in that building, other than those in the humanities: Art, music and drama? A. No other classes will be conducted there.

Q. Will any form of religious worship be conducted in that building? A. No.

Q. Does that building have any religious symbols or religious plaques on its facade or inside? A. It has no religious symbols.

Q. Is it the intention of the administration of Annhurst to make that auditorium available to the people in that area of Connecticut? A. Yes, it is the intention to have it available.

* * *

[766] SISTER CLAIRE PELLETIER

called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you state your name, please?

THE WITNESS: Sister Claire Pelletier.

THE CLERK: And where are you from?

THE WITNESS: I'm from Woodstock, Connecticut.

* * *

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. How long have you been stationed at Annhurst College, Sister? A. I came to Annhurst in 1965; September, 1965.

Q. And have you been on the faculty there? A. Since then.

Q. What have you taught? [767] A. I've been teaching art.

Q. What courses in art do you teach? A. I am teaching, right now, art education and poster design and lettering.

Q. In what building do you teach that course now? A. Right now I'm teaching in the Academic Building.

Q. Now, is it the intention of your department to move into the new academic facility which is being erected at Annhurst? A. That is correct, Mr. Williams.

Q. And can you tell us approximately when that will be ready for occupancy, if you know? A. I am hoping that it will be ready for the second semester, in January.

Q. And what will that building house, Sister, by way of departments at Annhurst? A. It will have the Fine Arts; the Art, the Music and the Drama.

Q. Will any other subjects be taught in that building? A. No.

Q. Is it the intention of the administration at Annhurst to have any religious services of any kind conducted in that building? [768] A. No, it isn't.

Q. Are there any religious symbols or plaques in the plans for that building? A. There aren't any.

Q. Or are there any in such portions of the building as have already been constructed? A. No, there aren't any.

Q. Now, in your courses in art do you make any effort, or have you ever made any effort, to inculcate or indoctrinate your students with any religious philosophy or religious doctrine? A. No. I don't see how I could do that.

Q. Is your course, in any way, shaped by your views on that subject? A. No, it isn't.

* * *

Supreme Court of the United States

No. 1555 ----, *October Term, 19* 69

Eleanor Taft Tilton, et al.,

Appellants,

v.

Robert H. Finch, Secretary of the United States Department of Health, Education and Welfare, et al.

APPEAL from the United States District Court for the District of Connecticut.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is placed on the summary calendar and set for oral argument immediately following No. 1189.

June 22, 1970